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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-1114

THE PEOPLE OF THE STATE OF CALIFORNIA and the PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Petitioners*,

vs.

SOUTHLAND ROYALTY COMPANY, *et al.*, TEXACO INC., EXXON CORPORATION, and MOBIL OIL CORPORATION, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Fifth Circuit

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No.

THE PEOPLE OF THE STATE OF CALIFORNIA and the PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Petitioners,*

vs.

SOUTHLAND ROYALTY COMPANY, *et al.*, TEXACO INC., EXXON CORPORATION, and MOBIL OIL CORPORATION, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit

Petitioners, the People of the State of California and the Public Utilities Commission of the State of California (California), respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on December 13, 1976.

OPINIONS BELOW

The judgment of the Court of Appeals is printed in Appendix A. The opinion of the Court of Appeals

is not reported yet and is printed in Appendix B. The Federal Power Commission's (Commission) Declaratory Opinion and Order on Termination of Long-Term Leases, Opinion No. 737, in the joint hearing of *El Paso Natural Gas Company,* Docket No. CP75-209 and *Texaco Inc.,* Docket No. CI75-594 is not yet reported and is printed in Appendix C. The Commission's Opinion and Order Denying Rehearing but Adopting Per Curiam, Opinion No. 737-A in Dockets Nos. CP75-209 and CI75-594, issued September 3, 1975 is not yet reported and is printed in Appendix D. The Commission's Opinion and Order Granting Rehearing on Limited Issue Relating to Filing Requirements, Opinion No. 737-B in Dockets Nos. CP75-209 and CI75-594, issued on December 18, 1975 is not yet reported and is printed in Appendix E.

JURISDICTION

The judgment of the Court of Appeals was entered on December 13, 1976. The jurisdiction of this court is invoked under 28 U.S.C. Sec. 1254(1) and Sec. 19(b) of the Natural Gas Act, 15 U.S.C. Sec. 717r(b).

QUESTION PRESENTED

Whether the Commission, pursuant to the Natural Gas Act,[1] can require reversionary mineral interest owners of certain gas producing lands to obtain

[1]Natural Gas Act of June 21, 1938, 52 Stat. 821, as amended, 15 U.S.C. Section 717, *et seq.*

abandonment authorization before they can terminate sales of a continuing flow of natural gas for resale in interstate commerce when the initial interstate dedication of the gas was made by leaseholders of 50-year fixed-term leases that have expired.

STATUTORY PROVISIONS INVOLVED

Involved here are provisions of the Natural Gas Act, 15 U.S.C. Sections 717-717w. Resolution of the issues presented turns especially upon Sections 7(b), (c), and (e), 15 U.S.C. Section 717f(b), (c) and (e). These provisions are set forth in Appendix F.

STATEMENT OF THE CASE

This case involves Opinions Nos. 737, 737-A and 737-B issued by the Commission on July 11, 1975, September 3, 1975 and December 18, 1975 respectively, in Dockets Nos. CP75-209 and CI75-594. On January 20, 1975, El Paso Natural Gas Company (El Paso) filed a petition for a declaratory order from the Commission requesting that the Commission decide whether Southland Royalty Company, *et al.,*[2] reversionary mineral interest owners of gas producing property formerly subject to a 50-year oil and gas lease, could cease deliveries to El Paso of gas currently being sold for resale in interstate commerce without prior abandon-

[2]Present owners of this reversionary mineral interest include Southland Royalty Company, Exxon Corporation, Mobil Oil Corporation, trustees under the will of Warren Wright and over 100 owners of small percentages.

ment approval of the Commission pursuant to Section 7(b) of the Natural Gas Act, 15 U.S.C., Section 717f(b).

On April 8, 1975, Texaco Inc. (Texaco), filed a similar petition for a declaratory order with the Commission. Texaco is involved in a fact situation identical to Southland Royalty Company. Texaco phrased its question to the Commission differently from El Paso, however. It requested that the Commission decide whether Gulf Oil Corporation (Gulf), a lessee of Texaco's property, could commit more than its interest under the lease to interstate commerce and by so doing place all reversionary interests within the ambit of Section 7 of the Natural Gas Act so as to require abandonment authorization from the Commission.

Both proceedings involve the termination of a 50-year oil and gas lease and the reversion of the mineral interest rights in the property to the reversionary mineral interest owners. On July 14, 1925, Gulf Production Company (predecessor to Gulf) executed an oil and gas lease with W. N. Waddell, *et al.*, by the terms of which Gulf obtained the exclusive right to produce and sell oil and gas on a tract of land in Crane County, Texas, for a term of fifty (50) years. Gulf made percentage type sales of gas produced from the Crane County lease to Warren Petroleum Company (Warren), now a division of Gulf.[3] Pursuant to two residue gas purchase contracts dated January 26, 1951 and March 1, 1972, Gulf sold gas for resale in inter-

[3]Gulf's Warren Division hereafter will be referred to as Gulf.

state commerce to El Paso at the tailgate of Gulf's Waddell Gasoline Plant. These sales were certificated by the Commission on February 24, 1958 (Docket No. G-13445) and August 7, 1973 (Docket No. CI72-760). When the 50-year period of the lease expired on July 15, 1975, Southland, *et al.*, the reversioners, obtained unconditional title to the mineral estate underlying the Waddell lease and announced their intention to sell the gas produced on this property in intrastate commerce.

On August 7, 1925, Gulf, as lessee, executed a 50-year fixed term oil and gas lease with Goldsmith, *et al.*, by which Gulf obtained exclusive mineral rights in certain property in Ector County, Texas. On May 4, 1929, Texaco acquired a one-fourth interest in the reversionary mineral estate of the property subject to this lease. Gulf sold gas under the Goldsmith lease to Phillips Petroleum Company (Phillips) under a percentage-type casinghead gas sales contract, and Phillips processed the Ector County gas at its Goldsmith Gasoline Plant and sold the residue gas to El Paso pursuant to certificates issued by the Commission. On August 7, 1975, this lease expired and the mineral rights reverted to the reversionary mineral interest owners, including Texaco. These reversionary mineral interest owners also indicated an intent to sell gas produced on the Ector County property in intrastate commerce.

On July 11, 1975, the Commission issued Opinion No. 737, holding, *inter alia*, that neither Southland, *et al.*, nor Texaco, *et al.* could sell the gas in intra-

state commerce without prior abandonment authorization by the Commission pursuant to Section 7(b) of the Natural Gas Act.

Applications for rehearing were filed and on September 3, 1975, the Commission issued Opinion No. 737-A denying rehearing and again holding that Southland, *et al.* and Texaco, *et al.*, would be required to obtain abandonment authorization under Section 7(b).

Petitions for review of Opinions Nos. 737 and 737-A were filed by Southland, *et al.*, Texaco Inc., Exxon Corporation, and Mobil Oil Corporation in the U.S. Court of Appeals for the Fifth Circuit.

On November 25, 1975, pursuant to a motion by the Commission and on consent of the parties, the record was remanded for further consideration of the necessity of certificate and rate filings by the reversionary mineral interest owners pending the outcome of this litigation. On December 18, 1975, the Commission issued Opinion No. 737-B which eliminated these filing requirements and on February 2, 1976, returned the record to the Court of Appeals.

On September 22, 1975, California filed its petition to intervene in the consolidated cases before the Court of Appeals in Dockets Nos. 75-3373, 75-2851, 75-3682, 75-3819 and 75-4001 *(Southland Royalty Company, et al., v. Federal Power Commission)* which was granted by the court below. California is directly affected by the outcome of this case. El Paso is the source of approximately 70 percent of California's gas supply. The supplies of natural gas to California consumers have been steadily declining since 1972. This has caused the curtailment of natural gas to low priority customers in California. In the instant case, 25,000 Mcf per day of natural gas has been sold by Gulf to El Paso under the lease at the Waddell Gasoline Plant and 18,000 Mcf a day of gas has been sold to El Paso by Phillips from the Goldsmith plant. The loss of this significant amount of gas to the El Paso system will directly impact the supply available to California consumers.

The matter was briefed by the parties and oral argument was heard on August 3, 1976.

The Court of Appeals, by opinion issued December 13, 1976, reversed the orders of the Commission under review. The Court of Appeals held that, since Gulf never was possessed of rights in the gas under the leasehold lands which could survive the termination of its 50-year leases, it never could create rights in a third person to the same gas. The Court of Appeals agreed with the petitioners below that the case should be analyzed as purely a real property law question. Early in its opinion the Court of Appeals stated: "The challenge presents this significant property rights vs. regulatory powers issue: . . .".

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals creates serious problems in the scheme of regulation of the sale for resale and transportation of natural gas in interstate commerce. Broadly, the decision of the court

below affects the authority of the Commission to enforce the abandonment provisions of Section 7(b) of the Natural Gas Act, which is so critical to the protection of the public interest. Specifically, it allows the petitioners in the court below, reversionary mineral interest owners of the subject gas leases, to abandon the sale of natural gas in interstate commerce without having to apply for abandonment authority from the Commission. As will be shown below, this decision also will have ramifications far beyond this instant fact situation. It will affect the Commission's authority in dealing with many different kinds of legal arrangements used by natural gas producers and sellers.

This Court, in a line of cases involving Section 7(b) of the Natural Gas Act, has consistently given the broadest interpretation to that section holding that once gas is dedicated to interstate commerce there can be no withdrawal of that supply from continued interstate movement without Commission approval. This Court has additionally stressed the important public interest considerations that must be weighed in the abandonment of interstate service and the need to develop these considerations in the abandonment proceeding before the Commission.

In recent times, it has become apparent that there is a severe shortage of natural gas in the United States with a higher demand than the supply available. This has caused such drastic measures as the curtailment of natural gas to certain categories of customers. Along with this shortage has come un-

precedented escalations in the price of natural gas in intrastate commerce. The interstate price of natural gas has remained relatively stable under Commission regulation. While this price has recently been increased, it is still lower than the intrastate price. This fact was recognized by the court below. These economic conditions make it advantageous to challenge the abandonment requirements of the Natural Gas Act so that gas can be sold in intrastate commerce.

The decision of the court below is contrary to this Court's interpretation and rulings concerning the Natural Gas Act especially the all important abandonment provisions therein. If allowed to stand it could seriously hinder the operation of the Natural Gas Act. It is not in the public interest to allow the requirements of Section 7(b) of the Natural Gas Act to be so easily avoided. There is a definite need for stability in the interstate gas market which must be protected. The danger of exploitation of gas consumers in the area of rates and service has long been recognized by this Court.

The petitioners in the court below, Southland Royalty Company, *et al.*, Exxon Corporation, Texaco Inc. and Mobil Oil Corporation, have argued that this case is of limited significance because the 50-year fixed-term leases in issue here are no longer prevalent in the industry. California emphatically disagrees with the statement that this case is of limited significance.

Currently, the Commission in three separate proceedings involving almost identical facts has ordered

the continuation of jurisdictional sales in interstate commerce that had been made prior to the expiration of leases to which reversionary mineral interest owners had succeeded.[4] These cases all involve fixed-term leases and in all of the cases the final order of the Commission awaits the outcome of this case.

More importantly, however, this case brings into issue the basic tenet underlying Section 7(b) of the Natural Gas Act. The Commission has taken the position, based on decisions of this Court, that the Natural Gas Act applies to the supply of gas dedicated to interstate commerce, not to the amount of gas under contract[5], or lease[6] or even one portion of a production area[7].

The decision of the Court of Appeals brings that position into serious question and directly affects

[4]The cases pending before the Commission that are awaiting the outcome of this case are *Mineral Interest Owners,* Docket No. CI76-587, Order Maintaining Service *Pendente Lite* and Granting Protective Order, ____ FPC ____, issued July 6, 1976; Order Denying Rehearing, ____ FPC ____, issued September 3, 1976; the combined cases of *Dore Corporation,* Docket No. CS76-639, *Sullivan-Wells Company,* Docket No. CS76-640, and *Briercrest Oil Company,* Docket No. CS76-762, Findings and Order After Statutory Hearing Denying Small Producer Certificates of Public Convenience and Necessity, ____ FPC ____, issued September 8, 1976; and the combined cases of *Kerr-McGee Corporation, et al.,* Docket No. CI76-405, *Briercrest Oil Company,* Docket No. CI76-396, *Dore Corporation, et al.,* Docket No. CI76-315 and *Sullivan-Wells Corporation,* Docket No. CI76-316, Order Denying Rehearing, Granting Interventions Clarifying Orders, and Denying Motion, ____ FPC ____, issued May 7, 1976.

[5]*Sunray Mid-Continent Oil Co. v. FPC,* 364 U.S. 137, 4 L.Ed. 2d 1623, 80 S.Ct. 1392 (1960).

[6]*Mineral Interest Owners, supra,* Docket No. CI76-587, Order Maintaining Service *Pendente Lite* and Granting Protective Order, ____ FPC ____, issued July 6, 1976.

[7]*Mitchell Energy Corporation v. Federal Power Commission,* 533 F.2d 258 (5th Circuit 1976).

other types of arrangements. The Court of Appeals cited *El Paso Natural Gas Co. v. Perry R. Bass,* 48 FPC 1269 (1972), in which the Commission found that a royalty interest owner of gas that converted its royalty interest into a one-half working interest need not apply for abandonment authorization under Section 7(b). However, that case was limited by the Commission in its decision under appeal here and was subsequently completely overruled by the Commission in *Phillips Petroleum Company,* Docket No. CI76-68, Opinion No. 750, Opinion and Order Denying Rehearing, issued January 28, 1976. In the *Phillips Petroleum Company* case and in a line of decisions issued thereafter[8], the Commission required an abandonment application where a royalty interest owner converted its interest into a working interest. These cases involve the very relevant issue of the rate at which the natural gas may be sold in interstate commerce. If the working interest is considered as new gas, it could be sold in interstate commerce under a different and higher rate structure than that which applied under the royalty agreement.

In another fact situation recently before the Commission a lessor royalty interest owner had the option of terminating a gas lease if higher royalty payments

[8]Order Denying Rehearing issued February 24, 1976 in *Atlantic Richfield Company,* Docket No. CI76-50, and *Marathon Oil Company,* Docket No. CI76-195, ____ FPC ____; Order Denying Rehearing In Part and Granting Rehearing In Part for Purposes of Further Consideration, issued April 14, 1976 in *Atlantic Richfield Company,* Docket No. CI76-226, ____ FPC ____.

were not made[9]. The Commission, citing its decision in the Southland Royalty Company, *et al.*, case found that the lessor would not be allowed to cease the sale of gas in interstate commerce without approval under Section 7(b).

In *Northern Natural Gas Company v. John L. Crawford,* Docket No. CS76-6, Order Determining Gas Dedication, ... FPC ....., issued September 29, 1976, Order on Rehearing, ... FPC ....., issued December 1, 1976, a lessee of six parcels of land released his interest in four of them after receiving a certificate from the Commission to sell gas for resale in interstate commerce from all six parcels. The Commission required an abandonment application here.

The foregoing cases as well as numerous other situations involving leases or other legal arrangements created by sellers of gas for resale in interstate commerce will be affected by the outcome of the instant case. If the decision of the Court of Appeals is upheld or permitted to stand the Commission authority under Section 7(b) will be significantly weakened.

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1. THE COMMISSION'S ORDERS DO NOT CONFLICT WITH APPLICABLE CONSTITUTIONAL PROVISIONS OR PROPERTY LAWS

The petitioners in the court below relied on common law property theories to support their case. They argued that a lessee cannot burden property beyond

[9]*Pennzoil Producing Company, Shell Oil Company,* Dockets Nos. RI76-8, RI76-10, Opinion 753, ... FPC ....., issued January 30, 1976, rehearing denied, Opinion No. 753-A, ... FPC ....., issued February 27, 1976, rehearing denied, Opinion No. 753-B, ... FPC ....., issued March 26, 1976.

the term of the lease. Hence, the Commission, by issuing Opinions Nos. 737 and 737-A subjecting the reversionary mineral interest owners to Section 7(b) abandonment proceedings, illegally burdened their property with Gulf's dedication of gas in interstate commerce. This, according to petitioners below, violated the Fifth Amendment to the United States Constitution by depriving them of property without due process of law as well as violating Texas property law.

The court below agreed with this line of argumentation. It stated:

> "It is black letter law that a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the term of his interest (citations omitted). Since Gulf [the leaseholder] never was possessed of rights in the gas under the leasehold lands which could survive the termination of its 50-year lease, it never could create rights in a third person to that same gas."[10]

We respectfully disagree with the analysis of the court below. The Commission has not abrogated the property rights of the reversionary mineral interest owners. This group continues to hold full title to the subject mineral rights and to receive the economic benefits from the sale of gas. We submit that the Commission's orders do not conflict or overturn common law property principles or local property law. The orders implement the Natural Gas Act which places

[10]See Appendix B page 6.

certain regulatory requirements upon the gas in question by virtue of Gulf's leases and sale of gas in interstate commerce.

It is California's understanding that the decisions of this Court support the above analysis of the instant case.

In *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 4 L.Ed.2d 1623, 80 S.Ct. 1392 (1960), an independent producer was tendered a certificate of public convenience and necessity without time limitation for the sale of gas for resale in interstate commerce. The producer had requested that it be issued a certificate limited in time to the duration of a contract for the sale of gas which it had entered into. In analyzing the applicability of Section 7(b) abandonment authority, this Court discussed at length the aim of the Natural Gas Act to protect consumers against economic exploitation and the fact that private contracts could not be allowed to dictate the application of the Natural Gas Act.

This Court succinctly stated what the controlling factors were in a determination of the application of Section 7(b):

> "Our consideration of this, as well as the rest of petitioner's arguments, leads us to reiterate as our holding the clear implication of what we recently said in Catco [*Atlantic Refining Co. v. Public Service Commission of the State of New York*, 360 U.S. 378, 3 L.Ed.2d 1312, 79 S.Ct. 1246 (1959)]: An initial application of an independent producer, to make movements of natural gas in interstate commerce, leads to a certificate of public convenience and necessity under which the Commission controls the basis on which 'gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval.' . . ." (364 U.S. 156).

The Commission must look to the total natural gas reserve that was certificated and the flow of the natural gas in question, not the legal agreements concerning that gas.

In the *Catco* case cited above, the applicants for a certificate of public convenience and necessity had agreed upon a price for the sale of gas through a private contractual arrangement and attached a condition to their applications requiring the Commission to forego the consideration of this element of public convenience and necessity. This Court found that such a limitation was contrary to the scheme of the Natural Gas Act. The Commission could not be bound by private contractual arrangements. In describing the authority of and criteria to be used by the Commission under Section 7 of the Natural Gas Act, this Court set forth the language quoted above in this petition from the *Sunray* case indicating that the flow of gas in interstate commerce was the controlling factor in the application of the Natural Gas Act.

In *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366, 13 L.Ed.2d 357, 85 S.Ct. 486 (1965), another private contractual arrangement was at issue. In that case, the parties attempted to avoid Commission juris-

diction altogether by agreeing in their contract of sale that the gas was nonjurisdictional. This Court again held that the private contract was not controlling. Further, this Court again looked to the actual movement and use of the gas in issue as it did in *Sunray* as opposed to a contractual analysis to determine the applicability of the Natural Gas Act.

> "We said in Connecticut Co. v. Federal Power Commission, 324 U.S. 515, 529, 89 L.Ed. 1150, 1160, 65 S.Ct. 749, 'Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental, test.' And that is the test we have followed under both the Federal Power Act and the Natural Gas Act, except as Congress itself has substituted a so-called legal standard for the technical one . . ." (379 U.S. 366 at 368).

While *Lo-Vaca* is somewhat different from the issue presented in the instant matter, it is referenced to point out the important fact that this Court has consistently resolved legal issues concerning the Natural Gas Act by looking at the actual dedication and flow of natural gas in interstate commerce.

In two more recent cases concerning abandonment proceedings, the question of the physical movement of gas was not directly in issue. However, this Court reaffirmed the rule that legal contract theories cannot govern the application of Section 7(b) of the Natural Gas Act.

In *United Gas Pipe Line Co. v. FPC*, 350 F.2d 689 (5th Cir. 1965), aff'd 385 U.S. 83, 17 L.Ed.2d 181, 87 S.Ct. 265 (1966), a pipeline company was ordered to

continue purchasing gas from a producer after a sales contract between the two had expired because no abandonment authorization had been granted, and in *Transcontinental Gas Pipe Line Corp. v. Federal Power Commission*, 488 F.2d 1325 (D.C. Cir. 1973), cert. denied 417 U.S. 921, 41 L.Ed.2d 226, 94 S.Ct. 2629 (1974) the Commission's abandonment order was overturned because it gave dispositive weight to private contracts and failed to consider the public necessity in an abandonment proceeding.

The petitioners in the court below argued that the instant fact situation is different from those cases cited above in that there was no sales contract between themselves and a purchaser that terminated. Rather, they argued, Gulf, the leaseholder, lost all rights to the subject mineral interests through termination of its leases. Since the reversionary mineral interest owners never dedicated their "separate" gas supply in interstate commerce the Commission could only find that the Natural Gas Act applied if the mineral owners somehow had dedicated gas in interstate commerce during the period of the Gulf leases. The mineral owners placed great weight on *Mobil Oil Corporation v. FPC*, 463 F.2d 256 (D.C. Cir. 1971), cert. denied 406 U.S. 976, 32 L.Ed.2d 676, 92 S.Ct. 2409 (1972). In that case the court held that royalty owners of gas being sold in interstate commerce were not themselves engaged in the sale for resale of gas in interstate commerce and hence need not obtain certificates for such sale under the Natural Gas Act. The reversionary mineral interest owners in the instant case were royalty owners during the term of Gulf's leases. The reli-

ance on the above-cited *Mobil* case apparently is based on the theory that the Commission mistakenly found that mineral owners dedicated their gas to interstate commerce through their royalty interests. The reversionary mineral interest owners then argued that under the *Mobil* case doctrine, their gas has never been dedicated in interstate commerce. The petitioners then proceeded to base their arguments on real property law on the assumption that the Commission has abused their property rights in the gas.

This interpretation, however, takes too narrow a view of the line of cases in this Court on the abandonment provision of the Natural Gas Act.

This Court has consistently stated that the purpose of the Natural Gas Act was to protect consumers from exploitation in the areas of rates and service.[11] In this regard the Court has given the widest interpretation to the applicability of the Natural Gas Act. The Court has refused to recognize various attempts to avoid the mandate of the Natural Gas Act including contract provisions and lease sale agreements.[12] While there might be a valid distinction between contracts and land leases for purposes of Texas property law, the distinction cannot be used to avoid the Natural Gas Act. The *Mobil* case relied on by the reversionary mineral interest owners is not relevant to the Com-

[11] *Sunray Mid-Continent Oil Co. v. FPC, supra,* 364 U.S. 137 at 147.

[12] *California v. Lo-Vaca Gathering Co., supra,* 379 U.S. 366; *United Gas Improvement Company v. Continental Oil Company, et al.,* 381 U.S. 392, 14 L.Ed.2d 466, 85 S.Ct. 1517 (1965).

mission's order. First, the *Mobil* case is only applicable to royalty interest owners. It does not apply to those owners after they convert that royalty interest into a form of control over the gas and attempt to remove the gas from interstate commerce. Secondly, the Commission did not find that the reversionary mineral interest owners dedicated gas in interstate commerce themselves. The Commission looked beyond the legal arrangements relied on by reversionary mineral interest owners and looked at the natural gas reserve that was initially dedicated to interstate commerce and the historic flow of the gas. Gulf had the right to dedicate all the residue gas in interstate commerce from the leased lands in question. In fact, a certificate was issued by the Commission authorizing the sale of all of that gas. The Commission's decision was based on the fact that this gas was now being withdrawn from interstate commerce. The Natural Gas Act imposes a regulatory requirement on the subject natural gas over and above local law. This Court stated in *United Gas Improvement Company v. Continental Oil Company, et al.,* 381 U.S. 392, 400: "A regulatory statute such as the Natural Gas Act would be hamstrung if it were tied down to technical concepts of local law".

The argument of the petitioners in the court below completely fails to recognize the primary logic for the Commission's decision in Opinion No. 737. The Commission looked to the natural gas reserve that was dedicated to interstate commerce. This Court, as cited previously, has stated that a supply of gas once dedicated in interstate commerce cannot be with-

drawn without Commission abandonment authorization. Clearly, the Commission cannot be bound by the underlying legal arrangement. The ownership rights in the subject gas, which remain undisturbed, cannot affect the service requirement which was undertaken by Gulf and which attached to the gas. The certificate issued to Gulf was unlimited and applied to the total volume of gas in the two fields in issue.

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2. THE PUBLIC INTEREST REQUIRES THAT ABANDONMENT AUTHORIZATION BE OBTAINED

It has been stated in several cases that the public interest is the ultimate criterion under Section 7(b)[13]. The only forum where a proper determination of the public interest can be made is an abandonment proceeding before the Commission. To allow the reversionary mineral interest owners to make the decision to abandon service without Commission approval would not only create a significant avoidance of the Natural Gas Act, it would place the consideration of the public interest in private hands.

An analogous situation was discussed in the *Sunray* case, *supra,* 364 U.S. 137 at 143, where the Court decried the contention of the applicants before the Commission that they should be given a certificate of public convenience and necessity limited to the time frame of a contract for the sale of gas. This Court

[13] *Atlantic Refining Co. v. Public Service Commission of the State of New York, supra,* 360 U.S. 378 at 388; *Transcontinental Gas Pipe Line Corp. v. Federal Power Commission, supra,* 488 F.2d 1325 at 1328.

pictured a "pandora's box" of activities that would place the application of the Natural Gas Act in the hands of producers and pipeline companies if such a certificate were granted. This Court pointed out that the Natural Gas Act was created to preclude just such economic control by pipeline companies and producers.

In the instant case, it is not unreasonable to foresee that the type of lease involved here could be used as a method of limiting the Commission's abandonment authority over significant amounts of gas. More importantly, this case directly affects the very basis for the Commission's authority to require abandonment under Section 7(b) of the Natural Gas Act. It effects a form of price decontrol by allowing gas producers to establish lease agreements that permit them to withdraw gas as prices change. It also severely hinders the Commission in its task of planning energy policy in the future and estimating available gas reserves because the decision essentially limits the Commission to control over gas under lease or contract rather than the entire gas reserve involved in a sale for resale in interstate commerce. The gas producers cannot be allowed to pick and choose when it is advantageous to them to leave the interstate gas market in total disregard of the public interest.

Opinions Nos. 737, 737-A and 737-B deal with gas production that has been flowing continuously in interstate commerce. The case law and the public interest requirements of the Natural Gas Act dictate that Section 7(b) abandonment proceedings be applied.

CONCLUSION

In view of the nationwide importance of an equitable and functioning regulatory scheme for the sale for resale and transportation of natural gas in interstate commerce and the requirement that a viable abandonment procedure be a part of that framework, California respectfully requests the opportunity to present this question to the Court more fully.

California respectfully submits that this petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be granted.

Dated: February 11, 1977.

Respectfully submitted,

JANICE E. KERR,

J. CALVIN SIMPSON,

RANDOLPH W. DEUTSCH,

Attorneys for Petitioners the People of the State of California and the Public Utilities Commission of the State of California.

(Appendices Follow)

APPENDICES

Appendix A

United States Court of Appeals
for the Fifth Circuit

October Term, 1975

No. 75-3373

Your No. FPC CP75-209

Southland Royalty Company, et al.,
Petitioners,

versus

Federal Power Commission,
Respondent.

Petition for Review of an Order of the Federal Power Commission (Texas Case)

Before CLARK, RONEY and TJOFLAT, Circuit Judges.

JUDGMENT

This cause came on to be heard on the petition of Southland Royalty Company, et al. for review of an order of the Federal Power Commission and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the petition for review of an order of the Federal Power Commission in this cause be, and the same is hereby reversed;

It is further ordered that respondent pay to petitioners the costs on appeal to be taxed by the Clerk of this Court.

December 13, 1976

Issued as Mandate:

Appendix B

United States Court of Appeals
for the Fifth Circuit

Nos. 75-3373, 75-2851, 75-3682,
75-3819 and 75-4001.

Southland Royalty Company, et al.,
Texaco Inc., Exxon Corporation, and
Mobil Oil Corporation,
Petitioners,

vs.

Federal Power Commission,
Respondent.

[Dec. 13, 1976]

Petitions for Review of Orders of the Federal
Power Commission (Texas Cases)

Before CLARK, RONEY and TJOFLAT, Circuit Judges.

CLARK, Circuit Judge:

Unprecedented escalations in the price of energy have stunned public, industry and engineers of federal regulatory process alike. The gross imbalance between controlled prices at which interstate natural gas must be sold[1] and the substantially higher values set by the free market for gas and other fuels has created a

[1]While this opinion was in preparation, the Federal Power Commission announced a dramatic increase in regulated natural gas prices which substantially eliminated this price gap.

sunburst of unique regulatory issues. Today's case is one such ray. Southland Royalty Co., and others,[2] (Southland) challenge opinions of the Federal Power Commission (FPC) which held that natural gas which Southland now owns in fee under a leasehold reversionary interest had been dedicated to interstate commerce by the lessee of the property. The challenge presents this significant property rights vs. regulatory powers issue: Does the lessee under a 50-year fixed-term mineral lease, by making certificated sales of leasehold natural gas in interstate commerce, thereby dedicate to interstate commerce the gas which remains in the ground at the end of the 50th year? The FPC answered affirmatively. We reverse.

Two different leases are involved in the present case. Gulf Oil Corp. (Gulf) entered into a 50-year fixed-term lease on July 14, 1925, with W. N. Waddell. This lease covered approximately 46,000 acres in Crane County, Texas. Southland is the successor in title to the Waddell reversionary interest. After *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 74 S.Ct. 794, 98 L.Ed. 1035 (1954), Gulf received a certificate of public convenience and necessity from the FPC which authorized the sale of surplus residue gas under its lease in interstate commerce to El Paso Natural Gas Co. (El Paso).[3] A separate certificate

[2]Southland Royalty Company has ownership of approximately 47% of the acreage involved; trustees under the will of Warren Wright have 25.7%; Exxon Corporation, 14%; and more than 100 others own lesser shares.

[3]"Surplus residue gas," or casinghead gas, was the sole product sold by Gulf to El Paso. Gas-well gas from these properties was not dedicated to interstate commerce and has instead remained in the intrastate market.

was issued after Gulf and El Paso entered into a second contract in 1972 for the sale of further volumes of surplus residue gas. At no time was Southland a party to these contracts or the certification; the only interest which Southland held was the right to receive a royalty on the gas sold. Shortly prior to the end of Gulf's 50-year term, Southland contracted with the operator of an intrastate natural gas pipeline, Intratex Gas Company, for the future disposal of the gas covered by Southland's reversionary interest.

A similar 50-year fixed-term lease was executed August 7, 1925, between Gulf as lessee and Goldsmith and others as lessors. This lease covered approximately 20,000 acres in Ector County, Texas. In 1929 Texaco, Inc., acquired a one-fourth interest in the Goldsmith reversion. Southland also has a fractional interest in the reversion in the Ector County properties, as do other parties. The lessee, Gulf, made the same sort of unqualified interstate dedication of the natural gas being produced from this lease.

El Paso petitioned the FPC for a declaratory order establishing that Southland could not sell its gas in the intrastate market without first seeking FPC approval through abandonment procedures. 15 U.S.C. § 717f(b). Texaco also sought clarification of its position with regard to the Ector County properties, and its petition was consolidated with that filed by El Paso.

The FPC held that the reversioners could not remove the gas from the interstate market without FPC approval to abandon. The principal basis for its

conclusion was the unqualified dedication by the initial lessees of the properties committed all of the lease-hold gas including that which might become the property of reversioners to the interstate market. Alternatively, the FPC asserted that the acceptance of royalties from interstate gas sales of the lessees constituted ratification by the reversioners.

The FPC reasoned that this provision of Section 7(b) of the Natural Gas Act:

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any *service rendered* by means of such facilities, without the *permission and approval of the Commission* first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permits such abandonment. [15 U.S.C. § 717f(b) (Emphasis supplied by the Commission.)]

and this language from the Supreme Court's opinion in *Atlantic Refining Co. v. Public Service Commission* [*CATCO*], 360 U.S. 378, 388-89, 79 S.Ct. 1246, 1253-54, 3 L.Ed.2d 1312 (1959):

> The [Natural Gas] Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges. . . . Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval.

authorized the conclusion that once the lessee had made a dedication of gas from the leasehold, none of the gas under those lands could be removed from the interstate market unless the FPC authorized abandonment. That Gulf's ownership was always limited to the gas produced within a fixed 50-year term was held to be irrelevant.

Under applicable Texas law, Gulf's rights were those of a tenant for a term of years; its interest was a limited one which terminated completely when title reverted to Southland at the expiration of the 50-year term. It is black letter law that a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the term of his interest. 2 R. Powell, The Law of Real Property ¶247[1] (Rohan Ed. 1967). *See also, e. g.*, 1 H. Tiffany, The Law of Real Property § 153 (3d ed. 1939); 2 H. Williams & C. Meyers, Oil & Gas Law § 332 (1975). Since Gulf never was possessed of rights in the gas under the leasehold lands which could survive the termination of its 50-year lease, it never could create rights in a third person to that same gas. *Waddell v. Empire Drilling Co.*, 358 S.W.2d 221 (Tex.Civ.App.—Eastland 1962, writ ref'd n. r. e.). The estates in the single tract are as separate as though they subsisted in separate parcels of land. Though it is unquestioned that Gulf's dedication covered all of the surplus residue gas it produced during its lease term, there likewise can be no question that, under well established concepts of property law, Gulf could not legally deal in or dedicate that portion of the gas which South-

land might own upon termination of Gulf's estate. Indeed, the FPC does not attack this construction of Texas law. Rather, it emphasizes that (1) the extent of Gulf's rights during its 50-year term was unquantified; (2) under its presently vested leasehold estate, Gulf had the right to withdraw all of the natural gas under the lease land if it could; and (3) the interest of the reversioners was both future and contingent. Under this state of affairs, FPC asserts that Gulf was empowered to dedicate all lease gas to the interstate market.

Though the FPC attempts to distinguish it, the conclusion reached in the case of *El Paso Natural Gas Co. v. Perry R. Bass*, 48 F.P.C. 1269 (1972), is a compelling argument for our decision here. Bass contracted with Shell Oil Company to develop the gas under his property, retaining, however, a royalty interest and an option to convert his royalty interest into a one-half working interest. Under the contract, Shell had no right to sell any gas attributable to Bass's working interest. Shell's operations were certificated by the FPC for sales in interstate commerce to El Paso Natural Gas Company. Bass elected to convert his royalty to a working interest; El Paso sought a declaratory opinion from the FPC that Bass must proceed under the abandonment section of the Natural Gas Act as to his one-half working interest.[4] Responding to this contention, the FPC wrote:

> The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell had no right to sell. We will not

[4] 15 U.S.C. 717f(b).

> alter so the basic property rights of mineral interest owners through the fiction of Section 7(b) application . . . . El Paso's rights to purchase gas from . . . [the well] can rise no higher than Shell's rights to sell that gas. . . .

The alleged distinction between the *Bass* situation and the present case, namely, that Bass retained a present interest while here Southland had a future interest, is a distinction without a difference. In neither instance can a lessee encumber that which it does not own. To the extent that Gulf's present interest in all of the natural gas is contingent upon its removal within 50 years, the right to dedicate that gas removed to interstate commerce is likewise contingent. Whatever gas is left under the lease lands at the end of 50 years is not Gulf's gas and, by the plain terms of the limited leasehold estate, never belonged to it from day one forward.

The FPC's position could be apropos to a situation in which the subsequent holder of rights in the minerals has acquired or "succeeded" to those rights from a former holder who encumbered the estate. In general, when a successor comes into possession of the estate, he acquires it with all of the burdens on the property which were validly created by his predecessor in interest.[5] The contrary is true where the initial owner of property creates a limited estate in another subject to a provision that the remainder of the rights

[5] *Hartel v. Dishman*, 135 Tex. 600, 145 S.W.2d 865 (1940); *Stevenson v. Clausel*, 437 S.W.2d 404 (Tex.Civ.App.—Houston [14th Dist.] 1969, no writ).

in the land will revert to the original owner upon the expiration of time. Such a conveyance creates no right to encumber or restrict the reversionary estate.[6] The FPC's failure to appreciate these basic distinctions in property law[7] is the genesis of its error.

The FPC also relied on *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 80 S.Ct. 1392, 4 L.Ed.2d 1623 (1960), in which the Supreme Court ruled that the request of Sunray for a limited 20-year certificate for sale in interstate commerce (based on Sunray's 20-year contract with the interstate pipeline company involved) did not restrict the FPC to issuance of such a limited certificate. The Court reasoned that when Sunray chose not to "avail itself of its undoubted right to stand firm on its own application, and reject the proffered certificate," it waived its right to deny the certificate's validity. Id. at 141, 80 S.Ct. at 1395. The Court pointed out that the certificate of public convenience and necessity contemplated by the act is not intended to relate to any specific sale contemplated by the parties. Instead, it is based on the service to be rendered—the movement of natural gas in interstate commerce. Thus, the contract between the pipeline company and Sunray was merely the arrangement under which Sunray commenced its service.

[6] *First Nat. Bank v. Amarillo Nat. Bank*, 531 S.W.2d 905 (Tex.Civ.App.—Amarillo 1975); *Moore v. Kirgan*, 250 S.W.2d 759 (Tex.Civ.App.—El Paso 1952, no writ).

[7] The Commission stated "[f]or the practical purposes of the Act it makes no difference whether the successors happen to be assignees, purchasers or reversionary interests." Opinion 737, July 11, 1975.

The FPC's reliance upon *Sunray* as authority here is misplaced. The Court did not require Sunray to dedicate to interstate markets oil or gas which it did not own. It enforced the statutory scheme without impairing any contractual right since at the end of its initial 20-year sale contract period Sunray (or its successors in title) would still be the legal owner of the leasehold mineral estate. Indeed, the Court clearly indicated that it contemplated the continuation of ownership of the commodity which was dedicated by its reference to Sunray's ability to effectuate delivery of the service as a prerequisite to certification. On the other hand, Gulf, in the present case, at all times lacked the legal ability to deliver any gas from Southland's property after the expiration of its limited 50-year term.

The FPC further contends that since the application by Gulf for a certificate to sell in interstate commerce did not mention its limited interest, Southland cannot contend that its reversion is not subject to FPC control. Under such a theory a present interest holder could bind his reversioner by taking actions that exceed the actor's rights. The FPC's position is that this invasion should be permitted and the reversioner "protected" by a cause of action in state court against the present interest holder for the wrong. The approach stands both logic and land law on their heads. It is fallacious to justify the creation of a wrong by demonstration that a remedy is possible. Under Texas law Gulf's 50-year lease interest did not authorize it to impose any limitation on the reversionary estate. Having no right, it equally lacked the power to encumber the reversion by actions in excess of those authorized by its grant.

We are not concerned in the present case with any possibility of apparent or implied authority. Gulf's lease was properly recorded on the public land records. Its 50-year term limitation was within the FPC's constructive, if not its actual, knowledge. The contention that a lack of information justified reliance by the FPC and the public that the dedication to interstate markets of this gas extended beyond the expiration of Gulf's lease term is an assertion supported by neither fact nor authority. Moreover, no mention of this contention before us was made in the FPC's opinion. *See FPC v. Texaco, Inc.*, 417 U.S. 380, 397, 94 S.Ct. 2315, 2326, 41 L.Ed.2d 141 (1974). We reject this argument on both substantive and procedural grounds.

Alternatively, the FPC argues that Southland ratified Gulf's improper dedication of all leasehold gas to interstate commerce by acceptance of royalty payments during the term of the leases. Ratification implies knowing choice.[8] By accepting royalties paid by Gulf during the term of its lease, the holders of the reversionary interest committed no action inconsistent with their reversionary rights. The sale of natural gas produced from the leaseholds within the lease term was solely Gulf's prerogative. The holders

[8] *Williams v. Thrasher*, 62 F.2d 944 (5th Cir. 1933); *Kunkel v. Kunkel*, 515 S.W.2d 941 (Tex.Civ.App.—Amarillo 1974, writ ref'd n. r. e.); *Yelderman v. McCarthy*, 474 S.W.2d 781 (Tex.Civ.App.—Houston [1st Dist.] 1971, writ ref'd n. r. e.).

of the reversion could not control its exercise further than to require payment of the proper contract royalty. By accepting that royalty, the petitioners received only that to which they were entitled under their lease. As we have held above, under Texas property law Gulf could not bind the reversionary estate by its actions. Thus, lessors could not have known it would be claimed that Gulf's dediction of its gas affected their reversionary interest.

The decision of the Federal Power Commissions is

REVERSED.

Appendix C

United States of America
Federal Power Commission

Opinion No. 737

El Paso Natural Gas Company	Docket No. CP75-209
Texaco Inc.	Docket No. CI75-594

DECLARATORY OPINION AND ORDER ON TERMINATION OF LONG-TERM LEASES

Issued: July 11, 1975

DC-50 & 51

United States of America
Federal Power Commission

Before Commissioners: John N. Nassikas, Chairman;
William L. Springer,
and Don S. Smith.

El Paso Natural Gas Company	Docket No. CP75-209
Texaco Inc.	Docket No. CI75-594

Opinion No. 737

DECLARATORY OPINION AND ORDER ON TERMINATION OF LONG-TERM LEASES

(Issued July 11, 1975)

PER CURIAM.

El Paso Natural Gas Company on January 20, 1975, filed in Docket No. CP75-209 a petition for a declaratory order with respect to a 50-year fixed term lease currently held by Gulf Oil Corporation and others (Gulf, *et al.*) which will expire on July 14, 1975. By the terms of the lease Gulf obtained the exclusive right to produce and sell oil and gas from 45,771 acres of land in Crane County, Texas. When the lease expires, the mineral rights will revert to the mineral interest owners (Southland, *et al.*)[1]

[1]Originally the lease was executed with W. N. Waddell, *et al.* as lessors. Present owners include Southland Royalty Company 47.00%, Trustees under the will of Warren Wright 25.7%, Exxon Corporation 14%, and more than 100 others.

Gulf, *et al.* make percentage type sales to Warren Petroleum Company, now a division of Gulf covering certain quantities of casinghead gas produced from the Crane County acreage. Pursuant to two gas purchase contracts, dated January 26, 1951, and March 1, 1972, Warren sells to El Paso approximately 60,000 Mcf per day of surplus residue gas at the outlet of the Waddell Gasoline Plant, and El Paso transports this gas through its jurisdictional facilities for subsequent resale in interstate commerce. Approximately 25,000 Mcf per day of this residue gas comes from wells leased by Gulf, *et al.*

Upon termination of the lease the owners of the mineral interests will hold a fee simple title as reversioners to their pro rata share of the mineral estate underlying the subject acreage. *Gulf Oil Corp. v. Southland Royalty Co.*, 496 SW2d 547, 522 Tex. Sup. Ct. 1973 (1973). The mineral interest owners state that they have agreed to sell to Intratex Gas Company the gas from their fee simple estate. Furthermore El Paso says that Exxon has solicited proposals for the purchase of the gas attributable to its reversionary interest rights for sale in intrastate commerce.

On this state of facts on which there is no dispute El Paso seeks an order determining whether Southland, *et al.* may sell the gas from the Crane County leasehold in intrastate commerce without prior permission and approval of the Commission under Section 7(b) of the Natural Gas Act, whether Gulf, *et al.* must obtain the permission and approval of the

Commission to cease making sales to Warren and to transfer their rights to Southland, *et al.*, and whether Warren (now Gulf) may reduce its sales to El Paso to the extent they are attributable to the leasehold property without prior Commission permission and approval.

In like manner on April 8, 1975, Texaco Inc. in Docket No. CI75-594 filed a petition for a declaratory order to determine whether a lessee, by making an interstate gas sale, can commit more than its real property interest (i.e. its rights under its lease) thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act. The facts underlying Texaco's petition are similar to those involved in El Paso's petition. In 1925 Gulf, as lessee, and Goldsmith, *et al.* as lessors, executed a 50-year fixed term oil and gas lease by which Gulf obtained exclusive mineral rights to some 19,840 acres in Ector County, Texas, until August 7, 1975, when the mineral rights would revert to Goldsmith, *et al.*, with whom Texaco acquired a ¼ interest in 1929. Gulf sells gas from the Ector County leasehold to Phillips Petroleum Company under a percentage-type casinghead gas sales contract, and Phillips sells the residue gas from the tailgate of its Goldsmith Plant to El Paso. Approximately 18,000 Mcf per day of the residue gas sold to El Paso by Phillips is attributable to the Ector County lease. Texaco says that it is has knowledge of these sales contracts but is not a party to either one.

On June 3, 1975, after a petition by Texaco, the Commission consolidated Docket Nos. CP75-209 and CI75-594 because of the similarity of the facts and legal questions, found that because there was no factual dispute and no request for a hearing there was no need to hold an evidentiary hearing, and provided opportunity for filing briefs. Accordingly, initial briefs were filed on June 20, 1975, or thereabouts, by Mineral Interest Owners, El Paso, Texaco, Gulf, People of the State of California and the Public Utilities Commission of the State of California, Exxon, Mitchell Energy Corporation and the Staff. Reply briefs were filed on June 25, 1975, by Mineral Interest Owners, El Paso, Texaco, Exxon, Phillips and the Staff.

On July 2, 1975, Exxon filed a motion requesting the Commission to include protective relief in any final order in the form of payback of volumes of gas if the Commission's order is reversed on review. The Mineral Interest Owners responded on July 3, 1975, supporting Exxon's motion on the basis of their understanding of it. By telegram of July 7, 1975, Gulf also supported the motion, and El Paso concurred on July 10, 1975, with a request for an amendment of the protective language.

On the question whether Southland, *et al.* may sell the gas from the Crane County leasehold in intrastate commerce without Commission approval and whether Goldsmith and Texaco may do likewise with respect to the Ector County gas, Mineral Interest Owners, Exxon and Texaco, with the support of Gulf, argue

variously that they are not required to obtain abandonment authority before initiating intrastate sales. They point out that the Commission has no authority to compel a producer to sell his gas in interstate commerce, and that their royalty interest does not make them sellers of gas in interstate commerce within the meaning of the Natural Gas Act and in no way dedicates their gas to the interstate market. They cite *Mobil Oil Corp v. F.P.C.*, 463 F.2d 256 (CADC 1971), *certiorari denied*, 406 U.S. 976 (1972), where the Court held that royalty owners were ordinarily not sellers of the gas. They note that in the instant case Gulf possessed only a 50-year leasehold right and had no legal authority to sell the gas produced beyond the termination date of the lease.

They rely heavily on *El Paso Natural Gas Co. v. Perry R. Bass*, 48 FPC 1269, Opinion No. 638 (1972). There Shell held a farm-out lease from Bass, who retained a royalty with the option after Shell recovered the cost of drilling to receive in lieu of the royalty a ½ working interest in the lease. Shell later sold gas from its "properties" to El Paso, and El Paso was to purchase from seller's "interest" in the wells. Still later Bass notified Shell of its election to accept a working interest and attempted to sell its working interest gas to Natural Gas Pipeline Company, but El Paso objected. The Commission held that the Shell-El Paso contract did not purport to cover any gas save that produced from the properties owned by Shell, that Bass was a royalty owner and not a seller, that Section 7(b) did not apply to Bass, that farm-

outs should be encouraged and that Bass did not have to obtain abandonment authorization before making its sale to Natural.

Texaco also argues that there will be no transfer of rights for the Commission to consider when Gulf's leases expire, for the leasehold estates will vanish and the reversion will occur by operation of law. Texaco also contends that the Commission lacks authority to adjudicate matters of title and must conform to state law, citing *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938). Both Texaco and Exxon also argue that they would be deprived of their properties without due process of law in violation of the Fifth Amendment if they were forced to sell their gas to El Paso after Gulf's leases terminate.

El Paso takes a contrary view. It says that once natural gas begins to flow in interstate commerce it becomes dedicated and Section 7(b) provides the exclusive means of terminating the service. The lessees have dedicated the gas produced by their wells and regardless of the termination of the lease, service must continue. It contends, further, that the reversionary interest owners step into the shoes of their predecessors, Gulf, *et al.*, and take the properties subject to the interstate dedications. It emphasizes that abandonment should not be permitted without a proceeding to determine that there is no betrayal of justifiable public reliance on the gas involved.

California says that the emphasis should not be placed on the contractual arrangements but on the

fact that the gas is currently dedicated to interstate commerce by physical movement in El Paso's pipeline. California also argues that the *Mobil* case should not apply and that in any case the reversionary owners are like the sellers of leases in the *Rayne Field* case, *U.G.I. v. Continental Oil Co.,* 381 U.S. 392 (1965).

It is the position of the Staff that the gas from the subject acreage, whether produced before or after expiration of the leases, is dedicated to the interstate market and that by virtue of their control over the gas the reversioners are subject to the constraints of Section 7(b). Staff adds that once the reserves are dedicated to the interstate market they become a part of the Commission's regulatory scheme, safeguarded by Section 7(b) to insure continuity and stability of service.

In our opinion the various mineral interest reversioners may not sell gas from the two leaseholds in intrastate commerce without prior permission and approval of the Commission. Although we have discovered no case directly in point, we are of the opinion that the cases and the purpose of the Natural Gas Act inevitably lead to this view. In the first place, the dedication involved is not the dedication of an individual party or producer, but the dedication of gas. In *CATCO, Atlantic Refining Co. v. P.S.C. of New York,* 360 U.S. 378 (1959), the Court said that once gas is dedicated "there can be no withdrawal of that supply from continued interstate movement without Commission approval." Furthermore, contractual

arrangements are not controlling as to whether the gas may be withdrawn from dedication. In *Sunray Mid-Continent Oil Co. v. F.P.C.,* 364 U.S. 170 (1960) the Court upheld the Commission in granting an unlimited term certificate. The Court noted that the "service in which the producer engages is distinct from the contract which regulates his relationship with the transmission company in performing the service". Here a service is being rendered by Gulf to El Paso utilizing the gas in the Crane County and Ector County leases.

Because of the termination of the 50-year leases the lease holders, Gulf *et al.,* lose their leases and their rights pass to Southland, *et al.* in one case and to Goldsmith, *et al.* and Texaco in the other case. Of course, we have determined that gas may not be withdrawn from interstate commerce by the assignment of leases from one lessee to another. *Cumberland Natural Gas Company,* 34 FPC 132 (1965); *Blair-Vreeland,* ..... FPC ....., Opinion No. 724, Docket No. CI74-331, March 18, 1975. But we do not rest our conclusion on these cases, but on the principle established by Section 7(b) that "service" may not be abandoned without our permission and approval. Thus, it makes no difference whether a lease is transferred or terminates, the obligation of service imposed upon the dedicated gas continues. As said in *Hunt v. F.P.C.,* 306 F.2d 334, 342 (CA 5, 1962), rev'd on other grounds, 376 U.S. 515 (1964), the duty to continue to serve is like an ancient covenant running with the land. This does not mean that we are modi-

fying the law of Texas as to the leasehold rights; we are however recognizing rights and duties that have been created by the Congress under the Natural Gas Act. Nor are we depriving the reversioners of their property without due process of law, for we are merely holding that their property is subject to a Section 7(b) proceeding and, in any case, they will be compensated for any continued interstate sales under the Natural Gas Act.

The *Mobile* case does not call for any different result. Under that case the mineral interest owners in each of the leaseholds are not natural gas companies. However, the gas has been dedicated to interstate commerce and was being sold in interstate commerce by Gulf, *et al.* It cannot be sold in intrastate commerce, and the sales in interstate commerce abandoned without our permission and approval under Section 7(b).

The *Bass* case, which did not involve the diversion of gas from interstate commerce, likewise does not alter our result. There the lessee, Shell, by means of its contract with El Paso, plainly intended to provide a service based upon the dedication of its interest in the leasehold, not the interest of Bass, who had the right to receive a ½ working interest in lieu of his royalty. The interstate dedication thus covered only part of the leasehold, while here the leaseholds were wholly dedicated to interstate commerce. In any case, we believe that the broad language used in *Bass* should be confined to the facts of the case and not extended to the difficult situation here involved. We therefore

conclude that Section 7(b) applies to the sale of the gas from the dedicated reserves in the two leaseholds involved here until they are exhausted.

Mitchell Energy argues that should the mineral interest owners be held to be subject to Section 7(b) it would be erroneous for the Commission to exercise any jurisdiction over any reserves not connected to facilities rendering jurisdictional service. Thus undiscovered and undeveloped reserves, it says, fall beyond the Commission's jurisdiction over abandonment. Mitchell Energy is arguing over again the issues which it raised in Opinion No. 733, *Mitchell Energy Corporation,* ..... FPC .....), Docket No. CI75-296, issued June 11, 1975. We believe those issues are adequately covered in that opinion.

As to whether Gulf, *et al.* must obtain abandonment permission in order to cease sales to Warren and transfer their rights to Southland, *et al.,* El Paso argues that the lessees have dedicated the natural gas produced by their wells to interstate commerce and may not cease making sales of the gas from these wells without abandonment authorization. El Paso indicates, however, that because Gulf has merged with Warren, Gulf would not have to obtain abandonment of its sale to Warren, but would to Phillips. Gulf itself points out that by virtue of the merger of Warren into Gulf there are no sales of gas between Gulf and Warren. Exxon says that with the expiration of the 50-year lease, El Paso's right to purchase production from Gulf ceases and so it does not require abandonment authorization.

Staff says that an abandonment application by lessees would be superfluous and inconsistent with the purpose of Section 2.64 of the Commission's General Policy and Interpretations to avoid unnecessary filings. However, as El Paso argues, Section 154.91(e) of the Commission's Regulations leaves subject to Section 7(b) producers making percentage-type sales to plant operators selling gas in interstate commerce. Therefore it would seem that Gulf would have to file for abandonment of its sales to Phillips, and the other lessees would have to file for abandonment of their sales to Phillips and Gulf's former affiliate Warren, now part of Gulf. In our opinion this is not a mere technical requirement as Staff would have it but would allow as to pass upon the merits of the lessees' abandonments upon the termination of the 50-year leases as well as the proposed abandonment of the reversioners, who want to remove the gas from interstate commerce. We should have all the significant parties before us if the relations between the reversioners, lessees, processing plants, and El Paso are to be changed.

As to whether Warren and Phillips may reduce their sales to El Paso without prior Commission permission and approval El Paso points out that the sales are in interstate commerce and abandonment authorization must be obtained if the quantities are to be permanently reduced even though the contracts provide for the sale of only surplus residual gas. Gulf points out that Warren now means Gulf and says that upon expiration of the fixed term leases the gas produced therefrom will no longer contribute to

the surplus residue gas Gulf could sell to El Paso, that the gas will belong to the reversioners, and that Gulf will have no control over it. The Staff, Exxon and Phillips say that under Section 154.91(e) of the Regulations the only obligation on a plant operator is to file an annual report listing any changes in the producers from whom the gas is purchased.

In our opinion the Commission did not intend to exempt plant operators from the requirement that they apply under Section 7(b) for abandonment of their sale to the extent that the sale has been reduced by a substantial and permanent loss of supply. Therefore the two plant operators Gulf (Warren) and Phillips should make applications under Section 7(b) if they lose substantial amounts of the gas they sell to El Paso upon termination of the 50-year leases.

In its motion of July 2, 1975, Exxon argues that whether the Commission acts before July 14, 1975, or thereafter, the Commission's action may impose obligations upon a party which will result in irreparable injury to that party if the Commission order should be reversed upon court review. It points out that it would not be desirable to shut in production pending action upon a request for stay since such action would result in interruption of oil and gas production and possible permanent damage to the wells. It requests that the Commission in its final order in this proceeding include language intended to protect all parties pending ultimate judicial review.

Briefly Exxon would require that if the Commission requires abandonment authorization for the min-

eral interest owners, as we have here, and it should be determined on review that the gas may be sold to others than El Paso without abandonment authority, then any deliveries by Southland, Exxon or other mineral interest owners shall not constitute a dedication of their gas to the interstate market, acceptance of monies shall not prejudice the rights of the mineral interest owners to claims for any rate different from the rate tendered by El Paso, and El Paso shall be required to repay Southland, Exxon and the other mineral interest owners in gas for the deliveries made to it during judicial review. Mineral Interest Owners state their support of Exxon's motion with certain reservations. El Paso concurs with Exxon's conclusion as to the need for protective language in the Commission's order. However, since payback of gas either to or by El Paso will affect directly El Paso's level of service to the interstate market, El Paso believes that Exxon's language should be amended by requiring payment subject to further Commission order.

In our opinion it is not appropriate for us under the Natural Gas Act to include the protective provisions requested by Exxon. We believe that if the parties need protective provisions in the form of a stay, payback of gas volumes or otherwise, they should address themselves to the appropriate court.

The Commission orders:

(A) In accordance with the above discussion:

(1) Southland, *et al.*, Exxon, Goldsmith, *et al.*, Texaco and other mineral interest owners of gas

reserves in the Crane County and Ector County leases involved here may not. upon termination of the leases, sell gas in intrastate commerce without prior permission and approval of the Commission under Section 7(b) of the Natural Gas Act;

(2) Gulf, itself, need not obtain abandonment. permission and approval to cease sales to its division, Warren, but other lessees must do so, and Gulf must do so with respect to its sales to Phillips;

(3) Gulf, formerly Warren, and Phillips may not reduce their sales to El Paso to the extent such sales are attributable to production from the subject leasehold property without prior Commission permission and approval.

(B) Exxon's motion to include protective language in the Commission's order is denied.

By the Commission.

(S E A L)

Mary B. Kidd,
Acting Secretary

Appendix D

United States of America
Federal Power Commission

Opinion No. 737-A

El Paso Natural Gas Company	Docket No. CP75-209
Texaco Inc.	Docket No. CI75-594

OPINION AND ORDER DENYING
REHEARING BUT ADOPTING PER CURIAM

Issued: September 3, 1975

DC-51

United States of America
Federal Power Commission

Before Commissioners: John N. Nassikas, Chairman;
William L. Springer and
Don S. Smith.

El Paso Natural Gas Company	Docket No. CP75-209
Texaco Inc.	Docket No. CI75-594

Opinion No. 737-A

OPINION AND ORDER DENYING
REHEARING BUT ADOPTING PER CURIAM

(Issued September 3, 1975)

Texaco Inc. on August 4, 1975, a group of Mineral Interest owners and Exxon Corporation on August 8, 1975, Gulf Oil Corporation (Gulf) and El Paso Natural Gas Company, on August 11, 1975, and Mobile Oil Corporation on August 13, 1975, have filed applications for rehearing of the Commission's Opinion No. 737 and order issued July 18, 1975, in the above-entitled proceedings. In Opinion No. 737 the Commission determined that the various mineral interest owners holding reversionary interests in 50-year leases covering certain gas reserves in Crane County and Ector County, Texas were subject to the dedications made by the leaseholders, Gulf and others,[1] for

[1] As here used Gulf includes the other leaseholders and predecessors.

the sale of the gas in interstate commerce to El Paso Natural Gas Company and that, upon termination of the leases, they might not sell gas in intrastate commerce without obtaining abandonment approval under Section 7(b) of the Natural Gas Act. The Commission also determined that Gulf need not obtain permission to cease sales to Warren Petroleum Company, now a division of Gulf, but that other leasees must do so, and that Gulf must do so with respect to its sales to Phillips Petroleum Company for resale to El Paso. Further, Gulf, formerly Warren, and Phillips may not reduce their sales to El Paso to the extent such sales are attributable to production from the subject property without prior Commission permission.

The applications for rehearing largely involve restatements and amplification of the arguments already made and covered in Opinion No. 737. The mineral interest owners contend that the only service dedicated to interstate commerce was the service of delivering all of the gas attributable to the fixed-term leaseholds estates. Just as half of the gas from a well may be dedicated to interstate commerce and half to intrastate commerce here, they say, only the leasehold interests were dedicated to interstate commerce. In our opinion there is a difference. Predecessors of Gulf commenced the service of delivering gas from the reserves here involved to interstate commerce. Gulf could have at the same time commenced delivering part of the gas here involved to intrastate buyers, and we would recognize such an intrastate dedication. Here, however, we are solely concerned with the service commenced by Gulf to El Paso in interstate commerce. Under Section 7(b) of the Natural Gas Act this service may not be abandoned without the permission of the Commission. Nor, as we said in Opinion No. 737, can this service be discontinued by transfer to a successor interest. For the practical purposes of the Act it makes no difference whether the successors happen to be assignees, purchasers or reversionary interests. While the contractual right to control and sell the reserves here involved has passed from Gulf to the various mineral interests, this does not mean that under the Natural Gas Act the gas flowing in interstate commerce may be diverted to the intrastate market. As said in *Huber Corp.* v. *F.P.C.*, 236 F.2d 550, 558 (CA3 1956), Congressional power to regulate interstate commerce in natural gas includes authority to regulate abandonment of sales.

Several of the applicants for rehearing argue, as they have previously, that *El Paso* v. *Bass*, 48 FPC 1269, Opinion No. 638 (1972) is contrary to our position here. There Bass entered into a farmout agreement with Shell to develop a producing area retaining a 1/8 overriding royalty with an option to convert it to a 1/2 working interest. Shell later entered into an agreement to sell gas to El Paso from "seller's interest in wells". Still later Bass exercised his option to convert to a working interest and proposed to sell his share of the gas to another pipeline. The Commission held that Bass might do so without obtaining abandonment authorization.

The chief differences between the *Bass* situation and the present one is that the Shell sale agreement

pointedly made it clear that Shell was only selling gas from its interest in the properties involved while in the present case Gulf had a long leasehold interest and sold surplus residue gas available from its leasehold properties. To the extent, however, that *Bass* can be said to stand for the proposition that the service initiated by the leaseholder based upon certain gas reserves covered by the lease can be terminated without Commission approved, it is overruled. It should be noted that Bass did not involve the shift of gas reserves from interstate to intrastate commerce and did involve the public interest in the encouragement of farmouts, and these circumstances, in part, explain the result in *Bass*.

The Mineral Interest Owners, Exxon and Texaco argue variously that we have violated the property law of Texas, the Tenth Amendment to the United States Constitution reserving to the states powers not granted to the Federal Government, and the Fifth Amendment by depriving them of property without due process of law. The essence of the argument appears to be that we are in error in holding that the leaseholders, Gulf *et al.*, had power to encumber the property with the result that the mineral lease owners are forced to enter into an interstate sale against their will. We assume that in 1925, when the leases were made the lease owners did not contemplate that the Natural Gas Act would be enacted with a provision that service might not be abandoned without approval of the Commission. They clearly did contemplate that the leaseholders would drill for oil and gas and sell oil and gas to outside parties, and there was no rea-

son that these sales could not be in interstate commerce, and may have had a duty to do so under the facts and law at that time. After the Natural Gas Act was enacted in 1938 and the *Phillips* case[2] was decided in 1954 the interstate sales of gas became subject to FPC jurisdiction. The leaseholders who had a duty to exploit the wells were the appropriate parties to seek FPC certification. Upon the commencement of interstate sales under FPC certification, the sales became imbued with the public interest.[3] The law of Texas preserved for the lease owners their property interest, and we do not change this, but Section 7(b) of the Act will not permit abandonment of interstate sales without our authority once such sales have commenced. The mineral lease owners who entered into a lease that permitted the leaseholders to make interstate sales are not deprived of this property by being required to permit such sales to continue, and they will be compensated under the just and reasonable rates promulgated under the Natural Gas Act.

These considerations, in our opinion, answer the argument of Exxon that it is being forced to make a sale at the termination of Gulf's leasehold interest and that this constitutes an unlawful taking under the

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[2] *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954).

[3] The lease owners could have intervened in the proceedings granting certificates to Gulf and Phillips Petroleum Co. to sell the gas to El Paso but our records do not reveal that they have done so. See orders dated May 28, 1956, in Docket No. G-7156, September 28, 1956, in Docket No. G-2625, 16 FPC 1440, and February 24, 1958, in Docket No. G13445, 19 FPC 1151, among others. However, the lease owners apparently had no objection to this interstate dedication, for they accepted royalties from such sales.

Fifth Amendment. The sale of gas was already being made from the properties here involved before the advent of regulation. Exxon or its predecessors had leased the properties for this purpose. The imposition of regulation did not constitute an unlawful taking. *Nebbia* v. *New York*, 291 U.S. 502 (1939); *F.P.C.* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 582 (1942). A producer contracting to sell gas in interstate commerce before regulation commences is properly subject to Section 7(b) although he may never have contemplated such a result. See *Harper Oil Co.* v. *F.P.C.*, 284 F.2d 137 (CA10 1960). Here Exxon is not being forced to make an initial sale but is required to conform to the Natural Gas Act when it succeeds to the interest of Gulf.

The Mineral Interest Owners, Exxon and El Paso argue that the Commission should provide protective relief, *pendente lite*. In Opinion No. 737 we discussed a proposal by Exxon that if we required abandonment authorization for the mineral interest owners, as we had, and if it were determined on judicial review that the gas might be sold to others than El Paso without abandonment authority, then any deliveries by the mineral interest owners should not constitute a dedication of their gas to the interstate market, acceptance of monies should not prejudice their right to a different rate, and El Paso should be required to repay them in gas for deliveries made to it during judicial review. However, we determined that it was not for us to include the protective provisions and that the parties should address themselves to the appropriate court.

Since Opinion No. 737, the Mineral Interest Owners on July 14, 1975, obtained a temporary stay of the Commission's order in the United States Court of Appeals for the Fifth Circuit. As of the same date upon the consent of Southland Royalty Company et al., Exxon, El Paso and the Commission, the Court issued an Interim Protective Order containing language corresponding to Exxon's proposal set forth here in ordering clause (B). The Court's order provided that it should be effective until a petition for review of the final Commission order on rehearing of Opinion No. 737 is filed in a court of appeals and any concurrently filed motion for stay or protective order is decided by the court of appeals and further judicial review is exhausted. The Court's order noted that the FPC represented that it did not concede that the Court had jurisdiction to enter a protective order in this matter, but in order to settle a controversy inasmuch as the Court had determined to act, the F.P.C. had represented that it believed that the foregoing provisions were the most equitable matter of preserving the status quo, and it would not move to vacate this order.

On August 4, 1975, Southland Royalty Company and El Paso entered into a letter agreement providing protective provisions and other terms for the continued delivery of gas to El Paso. The Mineral Interest Owners explain that due to the large number of people and distances involved the mineral interest owners, other than Southland, have not yet executed a formal document, but have agreed to it in principle.

More specifically, the letter agreement provides that where Southland is compelled to deliver gas to El Paso by Opinion No. 737 or any other order of the Commission or the courts the initial rate shall consist of the higher of 76.5 cents per Mef plus certain adjustments, 150% of the national rate, or any higher rate that El Paso is permitted to pay. If El Paso is prevented from including this cost of gas in its rates, Southland is to refund to El Paso the amount disallowed. In the event Southland prevails upon rehearing of Opinion No. 737 and delivers gas elsewhere and later it is determined that Southland should have continued to make deliveries to El Paso, there are requirements for the payback of volumes of gas to El Paso. In the event that the Commission's determination in Opinion No. 737 is reversed, and it is determined that the gas could have been sold to others than El Paso, there are requirements for the payback of gas by El Paso to Southland similar to those in the Court order discussed above.

El Paso and Southland also agree to request the Commission to include protective payback provisions in its order in accordance with the letter agreement and that these protective provisions shall be the sole measure of damages and liability as between El Paso and Southland. Attached to the letter agreement are general terms and conditions for the delivery of gas by Southland and payment thereafter by El Paso.

In our opinion the letter agreement misconceives the legal situation of the parties. Deliveries to El Paso must continue to be made by Gulf and Phillips

as before the termination of the leases until new rate filings are made in accordance with the Commission's Regulations substituting Southland, Exxon and other parties for those originally serving El Paso, unless permission is obtained from the Commission to abandon the service to El Paso. We observe further that until appropriate rate filings are made by Southland and other mineral interest owners we cannot resolve the issues raised by the agreement of August 4, 1975. Because of the Court order, however, putting in effect protective language to cover the situation where gas deliveries to El Paso continue, we think it appropriate to adopt this same language, as El Paso requests in its application for rehearing, to cover the period until our order becomes final.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Texaco, the Mineral Interest Owners, Exxon, Mobil and Gulf in these proceedings present no facts or legal principles that would warrant any change in or modification of the Commission's Opinion No. 737 and the accompanying order except as provided below.

(2) It is necessary and appropriate in the administration of the Natural Gas Act that the application for rehearing filed by El Paso be granted and that the protective language below be adopted to cover the period until our order becomes final.

The Commission orders:

(A) The applications for rehearing filed by Texaco, the Mineral Interest Owners, Exxon, Mobil, and Gulf are denied; the application for rehearing filed by El Paso is granted.

(B) If Southland, Exxon, or any other mineral interest owners should seek review of this order and upon review it should be ultimately determined that the gas may be sold to others than El Paso without abandonment authority, then any deliveries by Southland, Exxon, or the other mineral interest owners pending such judicial review shall not have constituted a dedication of their gas to the interstate market and acceptance of monies paid for gas delivered pending judicial review shall not prejudice the rights of the mineral interest owners' rights in the premises; further, El Paso shall be required to repay Southland, Exxon, and the other mineral interest owners in gas for the deliveries made to it pending judicial review. Such repayment is to be made by El Paso subject to the following conditions: (a) the pay-back volumes are to be delivered, in an equitable manner over a reasonable period of time, subject to further Commission order as to scheduling but not as to entitlement if El Paso, Southland, Exxon, and the other mineral interest owners cannot agree as to such scheduling, (b) Southland, Exxon, and the other mineral interest owners shall return to El Paso the monies paid for deliveries made pending judicial review, such repayments to be made within thirty (30) days following the end of each calendar month during which

payback volumes are delivered by El Paso, and (c) the pay-back volumes shall not be considered to be jurisdictional gas and acceptance thereof by Southland, Exxon, or the other mineral owners, or any of their customers, shall not subject any of them to Commission jurisdiction.

By the Commission.

[S E A L]

Kenneth F. Plumb,

Secretary.

Appendix E

United States of America
Federal Power Commission

Opinion No. 737-B

El Paso Natural Gas Company	Docket No. CP75-209
Texaco Inc.	Docket No. CI75-594

OPINION AND ORDER GRANTING REHEARING ON LIMITED ISSUE RELATING TO FILING REQUIREMENTS

Issued: December 18, 1975

DC-51

United States of America
Federal Power Commission

Before Commissioners:
Richard L. Dunham, Chairman;
Don S. Smith, John H. Holloman III,
and James G. Watt.

El Paso Natural Gas Company	Docket No. CP75-209
Texaco Inc.	Docket No. CI75-594

Opinion No. 737-B

OPINION AND ORDER GRANTING REHEARING ON LIMITED ISSUE RELATING TO FILING REQUIREMENTS

(Issued December 18, 1975)

PER CURIAM:

Mineral Interest owners[1] on October 3, 1975, filed an application for rehearing with respect to the Commission's Opinion No. 737-A and Order issued September 3, 1975. In that Opinion the Commission denied rehearing of Opinion No. 737 but adopted protective relief in case the Commission's order was

[1]Southland Royalty Company (Southland) William Y. Penn, *et al.*, Trustees, Nancy Elizabeth Penson, Penn Resources, Inc., Elizabeth Hudson Penn, Trustees under the will of Warren Wright deceased.

reversed on appeal. In Opinion No. 737 the Commission determined that owners holding reversionary interests in certain gas reserves in Crane and Ector Counties, Texas were subject to the dedications made by the leaseholders, Gulf Oil Corporation and others for the sale of gas in interstate commerce to El Paso Natural Gas Company and that, upon termination of the leases, such owners might not sell the dedicated gas in intrastate commerce without obtaining abandonment approval under Section 7(b) of the Natural Gas Act. Mineral Interest Owners contend that the Commission in Opinion No. 737-A erred in holding that deliveries to El Paso must continue to be made by leaseholders Gulf and Phillips until new rate filings are made by Southland, Exxon and other parties unless permission is obtained to abandon service and that the Commission erred in holding that issues were raised by the agreement of August 4, 1975, between El Paso and Southland and cannot be resolved until appropriate rate filings are made.

On October 20, 1975, Texaco, Inc. filed a response to the application of the Mineral Interest Owners for rehearing, which we have accepted as an application for reconsideration as explained in our order of October 31, 1975. In that order we granted rehearing for purposes of further consideration inasmuch as the record had been docketed in the United States Court of Appeals for the Fifth Circuit, depriving us of jurisdiction. However, on November 25, 1975, the Court granted the Commission's motion for a limited remand for purposes of further consideration.

As Mineral Interest Owners point out, we took notice of the Southland-El Paso letter agreement providing protective provisions and other terms for the continued delivery of gas to El Paso. We noted particularly that where Southland is compelled to deliver gas to El Paso by Opinion No. 737 the initial rate would consist of 76.5 cents per Mcf or 150 percent of the national rate. The Mineral Interest Owners object to our concluding language that:

> In our opinion the letter agreement misconceives the legal situation of the parties. Deliveries to El Paso must continue to be made by Gulf and Phillips as before the termination of the leases until new rate filings are made in accordance with the Commission's Regulations substituting Southland, Exxon and other parties for those originally serving El Paso, unless permission is obtained from the Commission to abandon the service to El Paso. We observe further that until appropriate rate filings are made by Southland and other mineral interest owners we cannot resolve the issues raised by the agreement of August 4, 1975. Because of the Court order, however, putting in effect protective language to cover the situation where gas deliveries to El Paso continue, we think it appropriate to adopt this same language, as El Paso requests in its application for rehearing, to cover the period until our order becomes final.

Mineral Interest Owners believe that this language is confusing as to whether they are required to make rate filings. They also contend that as small producers defined in Section 157.40 of the Commission's

Regulations they are not required to make any rate filings with respect to their deliveries to El Paso.

Texaco, which is plainly not a small producer but holds a reversionary interest in the Ector County leasehold, in its application for reconsideration views the protective orders issued by the Court and now by the Commission as having stayed the jurisdictional findings of Opinion Nos. 737 and 737-A, which would otherwise require filings by Texaco and other producers. It notes that the protective language indicates that the gas at issue can be delivered to El Paso by Texaco and other affected parties during the pendency of review without jurisdictional prejudice to any party's position. In these circumstances Texaco believes that the Commission's Opinion No. 737-A does not require the formal filing of its interim agreement with El Paso. We agree with Texaco's reasoning as applied to the period of the Commission and Court stay. Therefore, it is our opinion that it is not required to make rate schedule or certificate filings with respect to sales from its reversionary interest. The same result would apply to Exxon, which holds a reversionary interest in the Crane County leasehold.

With respect to Mineral Interest Owners, regardless of whether they are small producers, it is our opinion that they are likewise not required to make rate schedule and certificate filings with respect to their sales of gas from the reserves here involved because of the protective orders by us and by the Court as agreed by Texaco. Certain of the owners of reversionary interests have made rate schedule filings of

their interim agreements with El Paso. These filings would, of course, be unnecessary at this time.

The Commission further finds:

Opinion No. 737-A and Order should be modified in accordance with the above discussion.

The Commission orders:

The applications for rehearing of the Mineral Interest Owners filed October 3, 1975, and for reconsideration of Texaco filed October 20, 1975, are granted in accordance with the above discussion.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

Appendix F

Section 7 of the Natural Gas Act of 1938, 52 Stat. 825 (1938), as amended, 56 Stat. 83 (1942), 15 U.S.C. § 717f, provides in pertinent part:

> (b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.
>
> (c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and

> has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.
>
> In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.
>
> (e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the applica-

tion, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

Supreme Court, U. S.
FILED
AUG 31 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1114

CALIFORNIA, *et al.*, *Petitioners*

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

No. 76-1133

EL PASO NATURAL GAS COMPANY, *Petitioner*

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

No. 76-1587

FEDERAL POWER COMMISSION, *Petitioner*

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITIONS FOR WRITS OF CERTIORARI FILED
February 12 and 16 and May 12, 1977
CERTIORARI GRANTED JUNE 27, 1977

VOLUME I
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Supreme Court of the United States

OCTOBER TERM, 1977

Nos. 76-1114 *et al.*

CALIFORNIA, *et al., Petitioners*

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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State of California Notice of Intervention, dated 2/13/75, received 2/18/75	70-71	211-212
Exxon Corporation Petition for Leave to Intervene, dated 2/14/75, received 2/18/75	72-75	213-216
Texaco Inc. Petition for Leave to Intervene, dated 2/13/75, received 2/18/75	76-79	217-219

Item	Record Pagination	Appendix Pagination
El Paso Supplement to Petition filed 1/20/75, dated 2/21/75, received 2/24/75	80-82	220-224
Mitchell Energy Corp. Petition for Leave to Intervene, dated 2/20/75, received 2/25/75	83-87	225-228
Pacific Gas and Electric Co. Petition to Intervene, dated 2/26/75, received 2/28/75	88-92	229-232
Exxon Corp. Answer to Petition for Issuance of Declaratory Order and Request for Briefing Schedule, dated and received 3/3/75	93-101	233-241
Mineral Interest Owners Petition to Intervene and Answer to Petition for Declaratory Order, dated and received 3/3/75	102-125	242-265
Corrections dated and received 3/5/75	126-127	266-268
Gulf Oil Corp. Petition to Intervene and Response, dated 2/27/75, received 3/3/75	128-134	269-276
El Paso Answer to Petition filed last above, dated 3/12/75, received 3/13/75	135-140	277-282
Mineral Interest Owners Answer to Petition of Mitchell Energy Corp. for Leave to Intervene, dated and received 3/17/75	141-146	283-288
Texaco Inc. Petition for Issuance of a Declaratory Order, CI75-594, dated 4/7/75, received 4/8/75	147-159	289-298
Notice of Petition for Declaratory Order, issued 4/22/75	160-161	298-300

Item	Record Pagination	Appendix Pagination
El Paso Motion for Briefing Schedule and Answer to Petition of Texaco for Issuance of a Declaratory Order, dated 4/23/75, received 4/25/75	162-169	301-309
Texaco Inc. Motion to Consolidate Proceedings, dated 4/28/75, received 4/30/75	170-172	310-311
El Paso Petition for Leave to Intervene and Answer to filing last above, dated 4/23/75, received 5/6/75	173-187	312-327
Mineral Interest Owners Response to Motion for Briefing Schedule, dated and received 5/7/75	188-192	328-333
Mineral Interest Owners Petition to Intervene, dated and received 5/12/75	193-198	334-338
Gulf Oil Corp. Petition to Intervene and Response to Petition of Texaco, dated 5/9/75, received 5/12/75	199-210	339-349
Northwest Pipeline Petition to Intervene, dated and received 5/14/75	211-213	350-352
Phillips Petroleum Co. Petition to Intervene and Response, dated 5/21/75 and received 5/27/75	214-220	353-357
Order Consolidating Proceedings, Granting Petitions to Intervene, and Prescribing Schedule for Filing of Briefs, issued 6/3/75	221-225	358-364
VOLUME II		
Initial Briefs Filed:		
Commission Staff	238-253	365-382
State of California	254-263	383-394
El Paso Natural Gas Co.	264-292	395-434

Item	Record Pagination	Appendix Pagination
Exxon Corporation	293-305	435-451
Gulf Oil Corporation	306-315	452-465
Mineral Interest Owners	316-340	466-492
Mitchell Energy Corp.	341-345	493-498
Texaco Inc.	346-353	499-507
Reply Briefs Filed:		
Commission Staff	354-360	508-514
El Paso Natural Gas Co.	361-376	515-536
Exxon Corporation	377-383	537-545
Mineral Interest Owners	384-404	546-567
Phillips Petroleum Corp.	405-407	568-570
Texaco Inc.	408-414	571-577
Southwest Gas Corp. Answer in Support of El Paso Brief, dated 6/23/75, received 6/25/75	415-418	578-579
Exxon Corporation Motion for Inclusion of Protective Order, dated and received 7/2/75	419-423	580-585
Mineral Interest Owners Response to filing last above, dated and received 7/3/75	424-426	586-588
Gulf telegram supporting Exxon's motion, dated and received 7/7/75	427	589
El Paso Answer to Exxon's motion, dated and received 7/10/75	428-433	590-594
Exxon Response to El Paso filing last above, dated and received 7/11/75	434-436	595-597

Item	Record Pagination	Appendix Pagination
Opinion No. 737, Declaratory Opinion and Order on Termination of Long-Term Leases, issued 7/11/75	437-447	598-611
Texaco Inc. Applicaton for Rehearing, dated 8/1/75, received 8/4/75	448-452	612-615
Mineral Interest Owners Application for Rehearing, dated and received 8/8/75	453-501	616-674
Exxon Corporation Application for Rehearing, dated and received 8/8/75	502-510	675-685
El Paso Application for Rehearing, dated and received 8/11/75	511-516	686-691
Gulf Oil Corporation Application for Rehearing, dated 8/8/75, received 8/11/75	517-523	692-700
Mobil Oil Corp. Application for Rehearing, dated 8/11/75, received 8/13/75	524-530	701-707
Opinion No. 737-A, Opinion and Order Denying Rehearing But Adopting Per Curiam, issued 9/3/75	531-538	708-718
Mineral Interest Owners Application for Rehearing of Limited Aspects of Opinion No. 737-A, dated 10/2/75, re-received 10/3/75	613-623	719-729
Texaco Inc. Response to Application filed last above, received 10/20/75	624-629	730-734
Order Granting Rehearing for Purposes of Further Consideration on Limited Issues Relating to Filing Requirements, issued 10/31/75	630-631	735-737

Item	Record Pagination	Appendix Pagination
Opinion No. 737-B, Opinion and Order Granting Rehearing on Limited Issue Relating to Filing Requirements, issued 12/18/75	632-635	738-743
Reference to the Opinion of the Court of Appeals for the Fifth Circuit. Dated December 13, 1976		744
Reference to the Judgment of the Court of Appeals for the Fifth Circuit. Dated December 13, 1976		745
Order Granting Petitions for Writs of Certiorari. Dated June 27, 1977 ..		746

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(TITLE OMITTED IN PRINTING)

Relevant Docket Entries

Opinion .....December 13, 1976

Judgment .....December 13, 1976

[636] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G-7156

In the Matter of the Application for Certificate of Public Convenience and Necessity by Gulf Oil Corporation, an Independent Producer of Natural Gas

Application

Gulf Oil Corporation hereby makes application under and pursuant to § 7 of the Natural Gas Act for a Certificate of Public Convenience and Necessity with respect to the sale of natural gas herein specifically described, and, in connection therewith, shows the following:

1

Gulf Oil Corporation, hereinafter referred to as "Applicant", is a Pennsylvania corporation authorized to do business in the following states, to wit:

Arizona	New Mexico
California	New York
Colorado	North Carolina
Connecticut	North Dakota
Delaware	Oklahoma
Florida	Oregon
Georgia	Rhode Island
Idaho	South Carolina
Kansas	South Dakota
Maine	Texas

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Maryland	Utah
Massachusetts	Vermont
Minnesota	Virginia
Missouri	Washington
Montana	West Virginia
Nebraska	Wisconsin
New Hampshire	Wyoming
New Jersey	District of Columbia

2

No predecessor in interest of Applicant has, on or since June 7, 1954, had any interest in, or made any sale of, the natural gas covered by the contract which is the subject of this application.

3

Until further notice, all correspondence or communications in regard to this Application may be addressed to Ralph O. Rhoades, Vice President, Gulf Oil Corporation, P.O. Box 1166, Pittsburgh 30, Pennsylvania.

4

A statement of the pertinent facts applicable to the sale of gas for which a certificate is herein sought, is as follows:

(a) Kind of gas (indicate one)—☐ dry gas, ☐ casinghead gas, ☒ residue gas

(b) Date of contract—January 26, 1951, as amended

(c) Name of purchaser of gas from Applicant—El Paso Natural Gas Company

(d) Contract volumes M. C. F. (daily or annually), indicating pressure base—30,000 MCF per day measured at 14.65 psia

[638] (e) Price on June 7, 1954, or commencement date of gas deliveries—10¢ per MCF measured at 14.65 psia

(f) Term of contract—20 years

(g) Special conditions (if any)—Casinghead gas is gathered, compressed, treated, processed, and dehydrated by Gulf Oil Corporation, and the residue gas is delivered to the El Paso Natural Gas Company at the tailgate of the Plant.

Said contract has this date been filed with the Commission as a rate schedule and is incorporated by reference. In connection with the gas sale referred to above, Applicant would show the following:

(I) Source of the gas produced by Applicant:

Field: Dune, Edwards, Sand Hills McKnight, Sand Hills Ordovician, Sand Hills Tubb, University-Waddell Devonian, University-Waddell Ellenburger, and Waddell

County or Parish: Crane County

State: Texas

Delivery Points: At outlet of lease separators

Source of gas purchased by Applicant, if any:

Field: Dune, Edwards, Sand Hills McKnight, Sand Hills Ordovician, Sand Hills Tubb, University-Waddell Devonian, University-Waddell Ellenburger, and Waddell

County or Parish: Crane County

State: Texas

Delivery Points: At outlet of lease separators

Names of Sellers: American Liberty Oil Co., The Atlantic Refining Co., General American

Oil Co., Great Western Producers, Inc., Humble [639] Oil and Refining Co., Lario Oil and Gas Co., Magnolia Petroleum Co., Ohio Oil Co., Phillips Petroleum Co., R. F. Windfohr & The Ibex Co., Shell Oil Co., Skelly Oil Co., Samedan Oil Corp., and W. H. Black Oil Co.

(II) (Strike one of the following:)
Gathering lines of Applicant connect its well or wells to the delivery point or points referred to above.

(III) Applicant did not serve any communities with natural gas on June 7, 1954 at wholesale or retail.

(IV) Applicant serves no main line industrial customers with natural gas.

(V) Major pertinent properties or facilities, if any, such as compressor stations, gasoline plants, dehydration plants, purification plants, and gas storage projects:

(If any, describe briefly. If not state none.)

Gathering system, compressors, treaters, processing equipment, dehydration equipment, and other gasoline plant equipment used for processing casinghead gas before the residue gas is delivered to the El Paso Natural Gas Company.

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Notice of this Application has been served by registered mail upon the agency or person below indicated by an "x" mark:

☐ Oil and Gas Conservation Commission of the State of Colorado
Denver, Colorado

☐ State Corporation Commission of the State of Kansas
Topeka, Kansas

☐ Montana Oil & Gas Conservation Commission
State Capitol
Helena, Montana

☐ Governor Robert B. Crosby
State of Nebraska
State Capitol
Lincoln, Nebraska

☐ Oil Conservation Commission
State of New Mexico
Santa Fe, New Mexico

☐ State Industrial Commission
State of North Dakota
Bismarck, North Dakota

☐ Oklahoma Corporation Commission
Capitol Office Building
Oklahoma City, Oklahoma

☒ Railroad Commission
State of Texas
Tribune Building
Austin, Texas

☐ Governor J. Bracken Lee
State of Utah
State Capitol
Salt Lake City, Utah

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☐ Department of Mines
State of West Virginia
State Capitol
Charleston, West Virginia

☐ Oil & Gas Conservation Commission
State of Wyoming
State Capitol
Cheyenne, Wyoming

6

Applicant expressly reserves all of its rights and remedies, legal, equitable and administrative, including its Motion for Rehearing of Order 174-A filed with this Commission on August 16, 1954, to question, contest or oppose in any manner (i) the jurisdiction of the Commission over this Applicant, its properties and operations, including the sale of natural gas herein set out and any other sales which Applicant may make, and (ii) the validity and reasonableness of Order 174-A entered by this Commission in Docket No. R-138 under the Constitution and statutes of the United States, both in general and as applied to the specific sale herein described; and neither this application nor the sale of gas following the issuance of a Certificate pursuant hereto shall estop, impair, or prejudice the right of Applicant to pursue or assert any such rights or remedies, or be construed or treated as a waiver or admission of the Commission's jurisdiction over Applicant or of the validity or reasonableness of its said Order.

GULF OIL CORPORATION

Original signed by
By M. BAYER
H. M. Bayer, Vice President

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(VERIFICATION OMITTED IN PRINTING)

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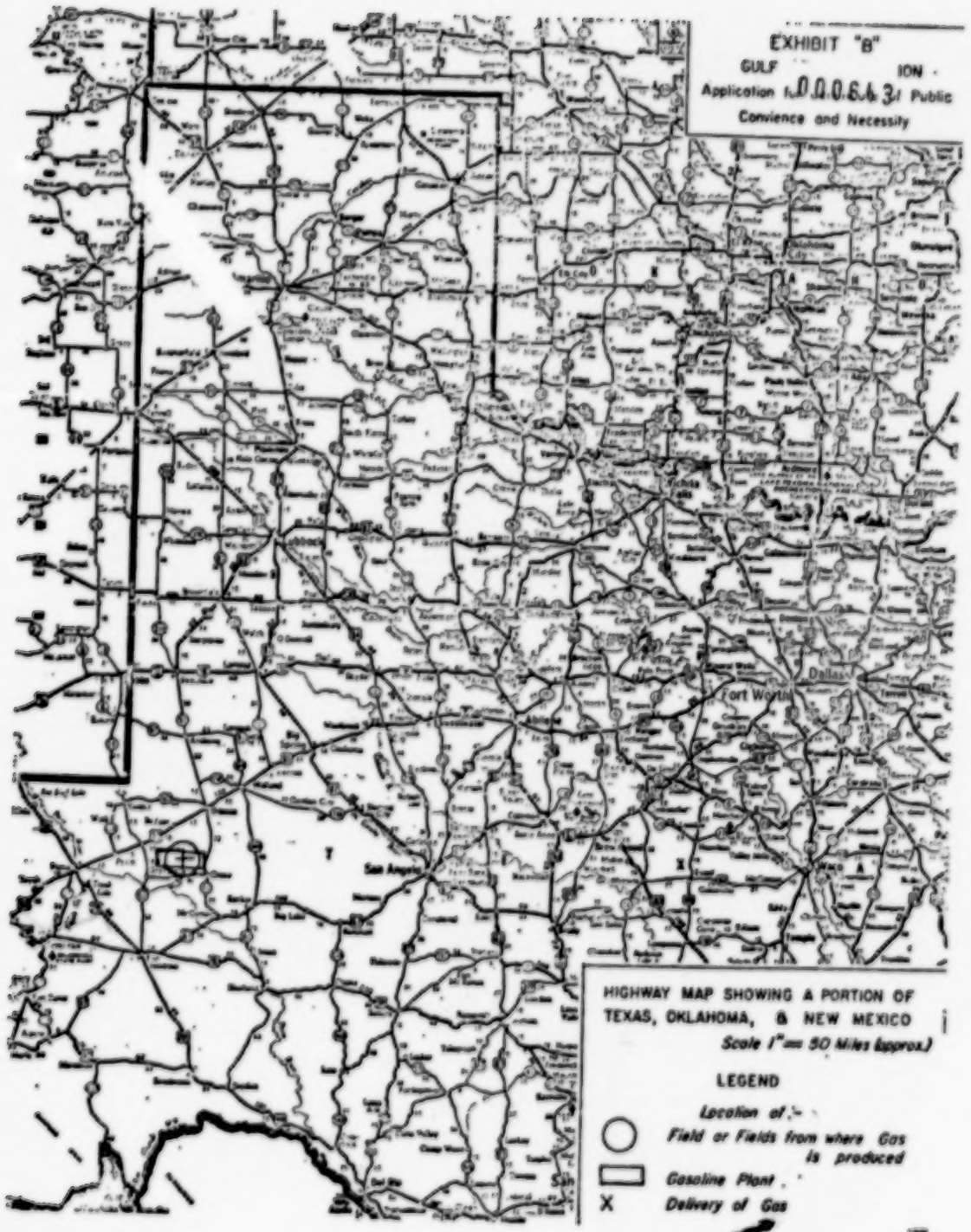

[644] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

(RECEIVED APRIL 23, 1956)

In the Matters of

Docket No. G-3275
Howard W. Fleet, et al.

Docket Nos. G-4814 thru G-4819, incl.
M. F. Powers

Docket No. G-5191
John A. Barnett

Docket Nos. G-5218, G-5220 and G-5221
Big Chief Drilling Company

Docket Nos. G-5291 and G-5292
Havenstrite Oil Company of Texas

Docket No. G-5659
Shell Oil Company

Docket No. G-5993
Baker and Taylor Drilling Company

Docket No. G-6180
The Superior Oil Company

Docket Nos. G-6319, G-6321 thru G-6324, incl.
Amerada Petroleum Corporation

Docket Nos. G-6342, G-6346, G-6353 and G-6355
Continental Oil Company

Docket No. G-6378
Kerr-McGee Oil Industries, Inc.

Docket No. G-6393
Joseph I. O'Neil, Jr.

Docket Nos. G-6406 and G-6407
Southwestern Exploration Company
(a Co-partnership)

Docket No. G-6429
Bass & Vessels, et al.

Docket No. G-6608
Phillips Drilling Corporation

Docket Nos. G-6619, G-6620, G-6626 thru G-6656, incl., G-6658 thru G-6664, incl., and G-6670
Sun Oil Company

Docket No. G-6825
Cabot Carbon Company

Docket No. 6950
Hanco Oil and Gas Company, Ltd.

Docket No. G-6994
Sue Reeder Turner

Docket Nos. G-7136 thru G-7141, incl., G-7143 thru G-7145, incl., G-7147 thru G-7158, incl.
Gulf Oil Corporation

Docket No. G-7706
Fraley Gas Company

Docket No. G-7734
N. B. Hunt

Docket No. G-7738
Wiley Page

Docket No. G-7755
W. W. Lechner and R. E. Hubbard

Docket No. G-7761
G. B. Cree and H. E. Schwartz

Docket No. G-7762
H. E. Schwartz, G. B. Cree and Southern Production Company, Inc.

Docket No. G-7768
Harold Davidor and R. H. Davidor, d.b.a.
Davidor & Davidor

Docket Nos. G-7769 and G-7770
Late Oil Company

Docket No. G-7811
Orville H. Parker, et al.

Docket No. G-7812
Phil D. Phillips, et al.

Docket No. G-7813
Clayton A. Woofter, et al. Lease, Roy G. Hildreth, et al., and Roy G. Hildreth, Agent

Docket No. G-7815
H. C. Grady, Jr. and J. W. Graham, Jr.

Docket Nos. G-7816 and G-7821
J. D. Caruthers

Docket No. G-7822
Lisbon Exploration Company, Inc.

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Docket No. G-7823
Malco Refineries, Inc.

Docket No. G-7824
Cree Oil, H. E. Schwartz and D. E. Williams

Docket No. G-7825
H. W. Klein

Docket No. G-7839
Charles N. Compton Oil and Gas Co.

Docket No. G-7840
Seward Butch Martin Oil and Gas Co.

Docket No. G-7841
Blanton Oil and Gas Co.

Docket No. G-7842
H. C. Hall Oil and Gas Co.

Docket No. G-7843
Little Rough Oil and Gas Co.

Docket No. G-7844
Ben Compton Oil and Gas Co.

Docket No. G-7851
Louis C. Quin, H. R. Wofford, Jr., and Arthur F. Graf, Jr.

Docket No. G-7852
Goliad Corporation

Docket No. G-8083
Peerless Oil and Gas Company

April 19, 1956

Notice of Applications and Date of Hearing

Take notice that each of the above Applicants has filed an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, authorizing Applicants to render services as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in their respective applications which are on

file with the Commission and open for public inspection.

Applicants produce and sell natural gas for transportation in interstate commerce for resale, as indicated below:

Docket No. G-	Location of Field	Buyer
3275	Denton Gasoline Plant	El Paso Natural Gas Company
4814 thru 4817, incl., and 4819	Hugoton Field, Kearney County, Kansas	Colorado Interstate Gas Company; Cities Service Gas Company; Kansas-Nebraska Natural Gas Company
4818	Carthage Field, Panola County, Texas	Texas Gas Transmission Corporation
5191	Spraberry Trend Area, Midland and Glasscock Counties, Texas	Texas Gas Products Corporation
5218, 5220, and 5221	Chris Hunt, Hitch Gray, and Stanolind-Wiggins Leases in Keyes Field, Cimarron County, Oklahoma	Colorado Interstate Gas Company
5291 and 5292	Anna Wells and Pembrook Leases in Upton County, Texas	Texas Gas Products Corporation

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5659	Tubb-Blinberry Field, Lea County, New Mexico	El Paso Natural Gas Company
5993	Acreage in Lea County, New Mexico	El Paso Natural Gas Company

Docket No. G-	Location of Field	Buyer
6180	Canyon Largo Unit, Rio Arriba County, New Mexico	El Paso Natural Gas Company
6319	Ignacio Field, La Plata County, Colorado	El Paso Natural Gas Company
6321, 6323 and 6324	Langlie-Mattix Field, Lea County, New Mexico	El Paso Natural Gas Company
6322	Fields in Lea County, New Mexico	El Paso Natural Gas Company
6342, 6346, 6353, and 6355	Eumont-Jalmat, Arrow, Tubb, Blinberry, Monument, McKee, and Langmat Fields Lea County, New Mexico	El Paso Natural Gas Company
6378	Keyes Field, Cimarron County, Oklahoma	Colorado Interstate Gas
6393	Jack Herbert Field, Upton County, Texas	El Paso Natural Gas Company
6406	Hugoton Field, Haskell, Stanton, and Seward Counties, Kansas	Colorado Interstate Gas Company; Northern Natural Gas Company
6407	Greenwood Field, Baca County, Colorado, and Morton County, Kansas	Colorado Interstate Gas Company
6429	North Sun Field, Starr County, Texas	Tennessee Gas Transmission Company
6608	Allison Unit Area, San Juan County, New Mexico, and La Plata and Archuleta Counties, Colorado	El Paso Natural Gas Company

Docket No. G-	Location of Field	Buyer
6619	Levelland Field, Hockley County, Texas	El Paso Natural Gas Company
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6620, 6640, 6643, 6645, 6648, 6653, 6655 and 6662	Carthage Field, Panola County, Texas	Texas Gas Transmission Corporation; United Gas Pipe Line Company; Texas Eastern Transmission Corporation; Tennessee Gas Transmission Company; Southern Natural Gas Company
6626	Mission Valley Field, Victoria County, Texas	Transcontinental Gas Pipe Line Corporation
6627	Shield Field, Nueces County, Texas	Transcontinental Gas Pipe Line Corporation
6628	La Gloria Field, Jim Wells County, Texas	Transcontinental Gas Pipe Line Corporation
6629	Various Fields in Starr County, Texas	Transcontinental Gas Pipe Line Corporation
6630	Quinto Creek Field, Jim Wells County, Texas	Transcontinental Gas Pipe Line Corporation
6631	N. Government Wells Field, Duval County, Texas	Tennessee Gas Transmission Company
6632	Brayton Field, Nueces County, Texas	Tennessee Gas Transmission Company
6633	Gyp Hill Field, Brooks County, Texas	Tennessee Gas Transmission Company
6634	Placedo Field, Victoria County, Texas	Tennessee Gas Transmission Company

Docket No. G-	Location of Field	Buyer
6635	Chesterville Field, Colorado County, Texas	Tennessee Gas Transmission Company
6636	Seeligson Field, Jim Wells County, Texas	Tennessee Gas Transmission Company
6637	Edinburg Field, Hidalgo County, Texas	Tennessee Gas Transmission Company
6638	Red Fish Bay Field, Nueces County, Texas	United Gas Pipe Line Company

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6639 and 6642	Cabeza Creek Field, Goliad County, Texas	United Gas Pipe Line Company
6641	Blanconia Field, Bee County, Texas	United Gas Pipe Line Company
6644	Hordes Creek Field, Goliad County, Texas	United Gas Pipe Line Company
6646	N. Minoak Field, Bee County, Texas	Texas Eastern Transmission Corporation
6647	Corpus Christi Channel Field, Nueces County, Texas	Tennessee Gas Transmission
6649	Payton-Devonian Field, Pecos County, Texas	El Paso Natural Gas Company
6650	Richard King Field, Nueces County, Texas	Tennessee Gas Transmission
6651	Helen Gohlke Field, Victoria County, Texas	Texas Eastern Transmission Corporation

Docket No. G-	Location of Field	Buyer
6652	Heyser Field, Victoria County, Texas	Tennessee Gas Transmission Company
6654 and 6664	Delhi Field, Richland Parish, Louisiana	Texas Eastern Transmission Corporation
6656 and 6660	Jalco Field, Lea County, New Mexico	El Paso Natural Gas Company
6658	Gwinville Field, Jefferson Davis County, Mississippi	Southern Natural Gas Company
6659	Langmat Field, Lea County, New Mexico	El Paso Natural Gas Company
6661	Purnell-North Pettus Field, Karnes County, Texas	United Gas Pipe Line Company
6663	Eumont Field, Lea County, New Mexico	Permian Basin Pipe Line Company
6670	North Bay City and North Markham Fields, Matagorda County, Texas	Transcontinental Gas Pipe Line Corporation

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6825	Keyes Field, Texas County, Oklahoma	Colorado Interstate Gas Company
6950	San Juan Basin, Rio Arriba County, New Mexico	El Paso Natural Gas Company
6994	Acreage in San Juan County, New Mexico	El Paso Natural Gas Company
7136	Winnsboro Field, Wood County, Texas	Lone Star Gas Company
7137	Woodlawn Field, Harrison County, Texas	Mississippi River Fuel Corporation

Docket No. G-	Location of Field	Buyer
7138	Waskom Field, Harrison and Panola Counties, Texas	Arkansas-Louisiana Gas Company
7139	Lemonville and West Gist Fields, Newton and Jasper Counties, Texas	Texas Eastern Transmission Corporation
7140	New Ulm Field, Austin County, Texas	Tennessee Gas Transmission Company
7141	North Lansing Field, Harrison County, Texas	Arkansas-Louisiana Gas Company
7143	Heyser Field, Calhoun County, Texas	Tennessee Gas Transmission Company
7144	Mustang Island Field, Nueces County, Texas	United Gas Pipe Line Company
7145	Placedo Field, Victoria County, Texas	Tennessee Gas Transmission Company
7147	N. McFaddin Field, Victoria County, Texas	United Gas Pipe Line Company
7148	Harleton (Whelan) Field, Harrison County, Texas	H. L. Hunt
7149	Stowell Field, Chambers County, Texas	Texas Gas Corporation
7150	Keystone, Waddell and McKee Fields, Winkler County, Texas	El Paso Natural Gas Company

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Docket No. G-	Location of Field	Buyer
7151	Jalmat and Blinberry Fields, Lea County, New Mexico	El Paso Natural Gas Company
7152	Carson Field, Gray County, Texas	Phillips Petroleum Company
7153	Sweetie Peck Field, Midland County, Texas	El Paso Natural Gas Company
7154	S. Fullerton Field, Andrews County, Texas	El Paso Natural Gas Company
7155	Denton Field, Lea County, New Mexico	El Paso Natural Gas Company
7156	Waddell, Edwards, Sand Hills, University-Waddell, and Dune Fields, Crane County, Texas	El Paso Natural Gas Company
7157	Jack Herbert (Penn) Field, Upton County, Texas	El Paso Natural Gas Company
7158	Arrowhead, Blinbery, Brunson, Drinkard, Hair, S. Hair, McCormick, Paddock and Penrose-Skelly Fields, Lea County, New Mexico	El Paso Natural Gas Company
7706	Fields in Wayne County, West Virginia	United Fuel Gas Company
7734	Fields in Lea County, New Mexico	El Paso Natural Gas Company

Docket No. G-	Location of Field	Buyer
7738	North Lansing Field, Harrison County, Texas	Louisiana-Nevada Transit Company
7755	North Lansing Field, Harrison County, Texas	H. L. Hunt
7761	East Panhandle Field, Gray County, Texas	Phillips Petroleum Company
7762	West Panhandle Field, Gray County, Texas	Cabot Carbon Company

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7768	North Whiterock Field, Noble County, Oklahoma	Cities Service Gas Company
7769	Langmat Field, Lea County, New Mexico	El Paso Natural Gas Company
7770	Eumont Field, Lea County, New Mexico	El Paso Natural Gas Company; Phillips Petroleum Company
7811	Hugoton Field, Stevens County, Kansas	Northern Natural Gas Company
7812	Washington District, Calhoun County, West Virginia	Godfrey L. Cabot, Inc.
7813	Glenville District, Gilmer County, West Virginia	Equitable Gas Company
7815	East Panhandle Field, Gray County, Texas	Warren Petroleum Company

Docket No. G-	Location of Field	Buyer
7816, 7821, and 7822	Lisbon Field, Lincoln and Claiborne Parishes, Louisiana	Mississippi River Fuel Corporation; Arkansas-Louisiana Gas Company; H. W. Klein
7823	Ignacio Field, La Plata County, Colorado Wasson Field, Yoakum County, Texas	El Paso Natural Gas Company; Shell Oil Company; Coltexo Corporation
7824	West Panhandle Field, Gray County, Texas	Cities Service Gas Company
7825	Lisbon Field, Claiborne and Lincoln Parishes, Louisiana	Arkansas-Louisiana Gas Company
7839 and 7844	Sucker Creek Field, Pike County, Kentucky	Kentucky West Virginia Gas Company
7840	Virgie Field, Pike County, Kentucky	United Fuel Gas Company
7841	Wolfe Creek Field, Martin County, Kentucky	United Fuel Gas Company

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7842	Right Beaver Creek Field, Knott County, Kentucky	Kentucky West Virginia Gas Company
7843	Johns Creek Field, Floyd County, Kentucky	Kentucky West Virginia Gas Company
7851	South Porter Field, Karnes County, Texas	United Gas Pipe Line Company
7852	Live Oak County, Texas	Transcontinental Gas Pipe Line Corporation
8083	Langmat Pool, Lea County, New Mexico	El Paso Natural Gas Company

These matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on May 21, 1956, at 9:30 a.m. (EDST), in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of Section 1.30 (c)(1) or (c)(2) of the Commission's Rules of Practice and Procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before May 7, 1956. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

/s/ LEON M. FUQUAY
Secretary

[653] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Jerome K. Kuykendall, Chairman; Claude L. Draper, Commissioners: Seaborn I. Digby, Frederick Stueck and William R. Connole.

IN THE MATTERS OF

Docket No. G-3275
Howard W. Fleet, et al.

Docket Nos. G-4814 thru G-4819, incl.
M. F. Powers

Docket No. G-5191
John A. Barnett

Docket Nos. G-5218, G-5200 and G-5221
Big Chief Drilling Company

Docket Nos. G-5291 and G-5292
Havenstrite Oil Company of Texas

Docket No. G-5659
Shell Oil Company

Docket No. G-5993
Baker and Taylor Drilling Company

Docket Nos. G-6319, G-6321 thru G-6324, incl.

Docket No. G-6378
Kerr-McGee Oil Industries, Inc.

Docket No. G-6393
Joseph I. O'Neil, Jr.

Docket Nos. G-6406 and G-6407
Southwestern Exploration Company
(a Co-partnership)

Docket No. G-6429
Bass & Vessels, et al.

Docket No. G-6608
Phillips Drilling Corporation

Docket Nos. G-6619, G-6620, G-6626 thru G-6640, incl., G-6642 thru G-6656, incl., G-6658 thru G-6664, incl., and G-6670
Sun Oil Company

Docket No. G-6825
Cabot Carbon Company

Docket No. 6950
Hanco Oil and Gas Company, Ltd.

Docket No. G-6994
Sue Reeder Turner

Docket Nos. G-7136 thru G-7141, incl., G-7143 thru G-7145, incl., G-7147 thru G-7158, incl.
Gulf Oil Corporation

Docket No. G-7706
Fraley Gas Company

Docket No. G-7734
N. B. Hunt

Docket No. G-7738
Wiley Page

Docket No. G-7755
W. W. Lechner and R. E. Hubbard

Docket No. G-7761
G. B. Cree and H. E. Schwartz

Docket No. G-7762
H. E. Schwartz, G. B. Cree and Southern Production Company, Inc.

Docket No. G-7768
Harold Davidor and R. H. Davidor, d.b.a. Davidor & Davidor

Docket Nos. G-7769 and G-7770
Late Oil Company

Docket No. G-7811
Orville H. Parker, et al.

Docket No. G-7812
Phil D. Phillips, et al.

[654] Docket No. G-7813
Clayton A. Woofter, et al. Lease, Roy G. Hildreth, et al., and Roy G. Hildreth, Agent

Docket No. G-7815
H. C. Grady, Jr., and J. R. Graham, Jr.

Docket Nos. G-7816 and G-7821
J. D. Caruthers

Docket No. G-7822
Lisbon Exploration Company, Inc.

Docket No. G-7823
Malco Refineries, Inc.

Docket No. G-7824
Cree Oil, H. E. Schwartz and D. E. Williams

Docket No. G-7825
H. W. Klein

Docket No. G-7839
Charles N. Compton Oil and Gas Co.

Docket No. G-7840
Seward Butch Martin Oil and Gas Co.

Docket No. G-7841
Blanton Oil and Gas Co.

Docket No. G-7842
H. C. Hall Oil and Gas Co.

Docket No. G-7843
Little Rough Oil and Gas Co.

Docket No. G-7844
Ben Compton Oil and Gas Co.

Docket No. G-7851
Louis C. Quin, H. R. Wofford, Jr., and Arthur F. Graf, Jr.

Docket No. G-7852
Goliad Corporation

Docket No. G-8083
Peerless Oil and Gas Company

Findings and Order Issuing Certificates of Public Convenience and Necessity

(Issued May 28, 1956)

Each of the above Applicants has filed an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, authorizing Applicants to render services as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in their respective applications which are on file with the Commission and open for public inspection.

Applicants produce and sell natural gas for transportation in interstate commerce for resale, as indicated below. Applicants are hereinafter referred to as Applicant.

Docket No. G-	Location of Field	Buyer
3275	Denton Gasoline Plant	El Paso Natural Gas Company
4814 thru 4817, incl., and 4819	Hugoton Field, Kearney County, Kansas	Colorado Interstate Gas Company; Cities Service Gas Company; Kansas-Nebraska Natural Gas Company
4818	Carthage Field, Panola County, Texas	Texas Gas Transmission Corporation
[655]		
5191	Spraberry Trend Area, Midland and Glasscock Counties, Texas	Texas Gas Products Corporation
5218, 5220, and 5221	Chris Hunt, Hitch Gray, and Stanolind-Wiggins Leases in Keyes Field, Cimarron County, Oklahoma	Colorado Interstate Gas Company
5291 and 5292	Anna Wells and Pembrook Leases in Upton County, Texas	Texas Gas Products Corporation
5659	Tubb-Blinberry Field, Lea County, New Mexico	El Paso Natural Gas Company
5993	Acreage in Lea County, New Mexico	El Paso Natural Gas Company

Docket No. G-	Location of Field	Buyer
6319	Ignacio Field, La Plata County, Colorado	El Paso Natural Gas Company
6321, 6323 and 6324	Langlie-Mattix Field, Lea County, New Mexico	El Paso Natural Gas Company
6322	Fields in Lea County, New Mexico	El Paso Natural Gas Company
6378	Keyes Field, Cimarron County, Oklahoma	Colorado Interstate Gas
6393	Jack Herbert Field, Upton County, Texas	El Paso Natural Gas Company
6406	Hugoton Field, Haskell, Stanton, and Seward Counties, Kansas	Colorado Interstate Gas Company; Northern Natural Gas Company
6407	Greenwood Field, Baca County, Colorado, and Morton County, Kansas	Colorado Interstate Gas Company

[656]

6429	North Sun Field, Starr County, Texas	Tennessee Gas Transmission Company
6608	Allison Unit Area, San Juan County, New Mexico, and La Plata and Archuleta Counties, Colorado	El Paso Natural Gas Company

Docket No. G-	Location of Field	Buyer
6619	Levelland Field, Hockley County, Texas	El Paso Natural Gas Company
6620, 6640, 6643, 6645, 6648, 6653, 6655 and 6662	Carthage Field, Panola County, Texas	Texas Gas Transmission Corporation; United Gas Pipe Line Company; Texas Eastern Transmission Corporation; Tennessee Gas Transmission Company; Southern Natural Gas Company
6626	Mission Valley Field, Victoria County, Texas	Transcontinental Gas Pipe Line Corporation
6627	Shield Field, Nueces County, Texas	Transcontinental Gas Pipe Line Corporation
6628	La Gloria Field, Jim Wells County, Texas	Transcontinental Gas Pipe Line Corporation
6629	Various Fields in Starr County, Texas	Transcontinental Gas Pipe Line Corporation
6630	Quinto Creek Field, Jim Wells County, Texas	Transcontinental Gas Pipe Line Corporation
6631	N. Government Wells Field, Duval County, Texas	Tennessee Gas Transmission Company
6632	Brayton Field, Nueces County, Texas	Tennessee Gas Transmission Company
6633	Gyp Hill Field, Brooks County, Texas	Tennessee Gas Transmission Company
6634	Placedo Field, Victoria County, Texas	Tennessee Gas Transmission Company

Docket No. G-	Location of Field	Buyer
6635	Chesterville Field, Colorado County, Texas	Tennessee Gas Transmission Company
[657]		
6636	Seeligson Field, Jim Wells County, Texas	Tennessee Gas Transmission Company
6637	Edinburg Field, Hidalgo County, Texas	Tennessee Gas Transmission Company
6638	Red Fish Bay Field, Nueces County, Texas	United Gas Pipe Line Company
6639 and 6642	Cabeza Creek Field, Goliad County, Texas	United Gas Pipe Line Company
6644	Hordes Creek Field, Goliad County, Texas	United Gas Pipe Line Company
6646	N. Minoak Field, Bee County, Texas	Texas Eastern Transmission Corporation
6647	Corpus Christi Channel Field, Nueces County, Texas	Tennessee Gas Transmission Company
6649	Payton-Devonian Field, Pecos County, Texas	El Paso Natural Gas Company
6650	Richard King Field, Nueces County, Texas	Tennessee Gas Transmission Company
6651	Helen Gohlke Field, Victoria County, Texas	Texas Eastern Transmission Corporation
6652	Heyser Field, Victoria County, Texas	Tennessee Gas Transmission Company

Docket No. G-	Location of Field	Buyer
6654 and 6664	Delhi Field, Richland Parish, Louisiana	Texas Eastern Transmission Corporation
6656 and 6660	Jalco Field, Lea County, New Mexico	El Paso Natural Gas Company
6658	Gwinville Field, Jefferson Davis County, Mississippi	Southern Natural Gas Company
6659	Langmat Field, Lea County, New Mexico	El Paso Natural Gas Company
[658]		
6661	Burnell-North Pettus Field, Karnes County, Texas	United Gas Pipe Line Company
6663	Eumont Field, Lea County, New Mexico	Permian Basin Pipe Line Company
6670	North Bay City and North Markham Fields, Matagorda County, Texas	Transcontinental Gas Pipe Line Corporation
6825	Keyes Field, Texas County, Oklahoma	Colorado Interstate Gas Company
6950	San Juan Basin, Rio Arriba County, New Mexico	El Paso Natural Gas Company
6994	Acreage in San Juan County, New Mexico	El Paso Natural Gas Company
7136	Winnsboro Field, Wood County, Texas	Lone Star Gas Company
7137	Woodlawn Field, Harrison County, Texas	Mississippi River Fuel Corporation
7138	Waskom Field, Harrison and Panola Counties, Texas	Arkansas-Louisiana Gas Company

Docket No. G-	Location of Field	Buyer
7139	Lemonville and West Gist Fields, Newton and Jasper Counties, Texas	Texas Eastern Transmission Corporation
7140	New Ulm Field, Austin County, Texas	Tennessee Gas Transmission Company
7141	North Lansing Field, Harrison County, Texas	Arkansas-Louisiana Gas Company
7143	Heyser Field, Calhoun County, Texas	Tennessee Gas Transmission Company
7144	Mustang Island Field, Nueces County, Texas	United Gas Pipe Line Company
7145	Placedo Field, Victoria County, Texas	Tennessee Gas Transmission Company
[659]		
7147	N. McFaddin Field, Victoria County, Texas	United Gas Pipe Line Company
7148	Harleton (Whelan) Field, Harrison County, Texas	H. L. Hunt
7149	Stowell Field, Chambers County, Texas	Texas Gas Corporation
7150	Keystone, Waddell and McKee Fields, Winkler County, Texas	El Paso Natural Gas Company
7151	Jalmat and Blinberry Fields, Lea County, New Mexico	El Paso Natural Gas Company

Docket No. G-	Location of Field	Buyer
7152	Carson Field, Gray County, Texas	Phillips Petroleum Company
7153	Sweetie Peck Field, Midland County, Texas	El Paso Natural Gas Company
7154	S. Fullerton Field, Andrews County, Texas	El Paso Natural Gas Company
7155	Denton Field, Lea County, New Mexico	El Paso Natural Gas Company
7156	Waddell, Edwards, Sand Hills, University-Waddell, and Dune Fields, Crane County, Texas	El Paso Natural Gas Company
7157	Jack Herbert (Penn) Field, Upton County, Texas	El Paso Natural Gas Company
7158	Arrowhead, Blinberry, Brunson, Drinkard, Hair, S. Hair, McCormick, Paddock and Penrose-Skelly Fields, Lea County, New Mexico	El Paso Natural Gas Company
7706	Fields in Wayne County, West Virginia	United Fuel Gas Company
7734	Fields in Lea County, New Mexico	El Paso Natural Gas Company
7738	North Lansing Field, Harrison County, Texas	Louisiana-Nevada Transit Company
[660]		
7755	North Lansing Field, Harrison County, Texas	H. L. Hunt

Docket No. G-	Location of Field	Buyer
7761	East Panhandle Field, Gray County, Texas	Phillips Petroleum Company
7762	West Panhandle Field, Gray County, Texas	Cabot Carbon Company
7768	North Whiterock Field, Noble County, Oklahoma	Cities Service Gas Company
7769	Langmat Field, Lea County, New Mexico	El Paso Natural Gas Company
7770	Eumont Field, Lea County, New Mexico	El Paso Natural Gas Company; Phillips Petroleum Company
7811	Hugoton Field, Stevens County, Kansas	Northern Natural Gas Company
7812	Washington District, Calhoun County, West Virginia	Godfrey L. Cabot, Inc.
7813	Glenville District, Gilmer County, West Virginia	Equitable Gas Company
7815	East Panhandle Field, Gray County, Texas	Warren Petroleum Company
7816, 7821, and 7822	Lisbon Field, Lincoln Claiborne Parishes, Louisiana	Mississippi River Fuel Corporation; Arkansas-Louisiana Gas Company; H. W. Klein
7823	Ignacio Field, La Plata County, Colorado Wasson Field, Yoakum County, Texas	El Paso Natural Gas Company; Shell Oil Company; Coltexo Corporation

Docket No. G-	Location of Field	Buyer
7824	West Panhandle Field, Gray County, Texas	Cities Service Gas Company
7825	Lisbon Field, Claiborne and Lincoln Parishes, Louisiana	Arkansas-Louisiana Gas Company
7839 and 7844	Sucker Creek Field, Pike County, Kentucky	Kentucky West Virginia Gas Company
[661]		
7840	Virgie Field, Pike County, Kentucky	United Fuel Gas Company
7841	Wolfe Creek Field, Martin County, Kentucky	United Fuel Gas Company
7842	Right Beaver Creek Field, Knott County, Kentucky	Kentucky West Virginia Gas Company
7843	Johns Creek Field, Floyd County, Kentucky	Kentucky West Virginia Gas Company
7851	South Porter Field, Karnes County, Texas	United Gas Pipe Line Company
7852	Live Oak County, Texas	Transcontinental Gas Pipe Line Corporation
8083	Langmat Pool, Lea County, New Mexico	El Paso Natural Gas Company

Pursuant to due notice, a public hearing was held in Washington, D.C., on May 21, 1956, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate de-

cision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30 (c) (1) of the Commission's Rules of Practice and Procedure.

The Commission *finds:*

(1) Applicant, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas hereinbefore described, as more fully described in the application, is made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

[662] (4) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) A request during the public hearing by Staff Counsel for omission of the intermediate decision procedure under Section 1.30 (c) of the Commission's Rules of Practice and Procedure, was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c) (1) of said Rules.

The Commission *orders:*

(A) A certificate of public convenience and necessity be and is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the operation of any facilities, subject to the jurisdiction of the Commission, used for the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate issued herein shall be deemed accepted and of full force and effect, unless refused in writing and under oath by Applicant within 30 days from issuance of this order.

(C) The certificate is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the service herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending [663] or hereafter instituted by or against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

By the Commission. Commissioner Digby concurring, subject to the statement attached.

/s/ LEON M. FUQUAY
Leon M. Fuquay
Secretary

[664] DIGBY, Commissioner, *concurring:*

I concur in the order granting a certificate of public convenience and necessity to sell natural gas. I object to any reference in the order concerning the issuance of a certificate of public convenience and necessity for the facilities of the independent producer or gatherer of gas.

A certificate of public convenience and necessity is neither required nor properly issued for construction

and operation of facilities of a producer or gatherer. The action of a majority of this Commission issuing a certificate for facilities is improper for it represents an assertion of power denied to us by Congress.

We have recognized the absence of power over facilities when, in Order No. 174 and Order No. 174-A, we failed to provide any procedure whereby application could be made for a certificate authorizing their construction and operation. We did promulgate procedural rules to enable filing of applications for certificates authorizing a sale or transportation. There was not even a suggestion that at some later time we would authorize or require authorization for construction and operation of facilities.

The action heretofore taken, insofar as it made no provision with respect to facilities, was wholly consistent with the declarations of the Supreme Court in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company,* 337 U.S. 498, 505; *Colorado Interstate Gas Co.* v. *Federal Power Commission,* 324 U.S. 581, 598; *Interstate Natural Gas Company* v. *Federal Power Commission,* 331 U.S. 682, 690-691, and *Phillips Petroleum Company* v. *State of Wisconsin,* 74 Sup. Ct. 794, 797-798. The language of the Court in these cases is clear and unambiguous. In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company, supra,* the Court stated that the "natural and clear meaning" of production or gathering contained in Section 1(b) of the Act encompassed "the producing properties and gathering facilities of a natural-gas company." In *Colorado Interstate Gas Co.* v. *Federal Power Commission, supra,* the Court stated that the production or gathering exemption applies to the "physical activities,

facilities and properties used in the production and gathering of natural gas." In *Interstate Natural Gas Company* v. *Federal Power Commission, supra,* the Court stated that effect must be given to the exemption of producing and gathering, and indicated clearly that facilities, properties and activities of a producer and gatherer were exempted. The Court, in *Phillips Petroleum Company* v. *State of Wisconsin, supra,* held only that a sale in interstate commerce for resale was not within the exemption of Section 1(b). The discussion with respect to facilities and the recitation of the above-cited cases represents clear recognition of the intended scope and effect of the exemption as regards facilities.

The issue to be resolved is whether the Natural Gas Act requires that a certificate of public convenience and necessity issue for construction and operation of the facilities necessary to effect a sale by a producer or gatherer in interstate commerce for resale. The issue is not whether a sale of gas in interstate commerce for resale can be made without facilities. It cannot be doubted that facilities necessary to effect a sale of natural gas in interstate commerce are facilities used in interstate commerce. Recognition of this fact cannot, however, create power in this Commission to issue, much less to require, certificates authorizing construction and operation of such facilities.

[539]

Residue Gas Purchase Agreement

THIS AGREEMENT, made and entered into as of the 26th day of January, 1951, by and between GULF OIL CORPORATION, a Pennsylvania corporation, hereinafter referred to as "Seller", and EL PASO NATURAL GAS

COMPANY, a Delaware corporation, hereinafter referred to as "Buyer".

WITNESSETH:

WHEREAS, Seller owns and operates a natural gasoline extraction plant, located in Section 25, Block B-26, Public School Lands, Crane County, Texas, processing casinghead gas produced in the area; and

WHEREAS, Seller has available at the plant and expects to continue to have a quantity of surplus residue gas not being sold to others; and

WHEREAS, Buyer desires to purchase such surplus residue gas.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, Seller and Buyer do hereby contract, covenant and agree with each other as follows, to wit:

[540]

ARTICLE I

DEFINITIONS

As used in this agreement, the following terms shall have the meanings herein stated:

a. Gasoline Plant or *Plant* shall mean that natural gasoline extraction plant, together with the necessary related facilities for compression and treatment of gas, located in Section 25, Block B-26, Public School Lands, Crane County, Texas, owned and operated by Seller, as such plant and related facilities may exist from time to time, including any and all additions and alterations thereto.

b. Casinghead Gas shall mean the gas issuing from oil wells, whether produced from the same strata from

which oil is produced or from any other strata, or whether recovered as a result of gas injection, and gas vaporized from oil after production.

c. Residue Gas shall mean the gas which remains after casinghead gas has been processed in the Gasoline Plant, less the varying amounts of gas required in or consumed in the operation of the Plant.

d. Surplus Residue Gas shall mean the residue gas in excess of the varying quantities required (1) for the operation and development of Seller's properties in the vicinity of said Plant, including but not by way of limitation residue gas for gas injection purposes; (2) to meet its obligations to its lessors under the terms of its oil, gas and mineral [541] leases in the area in which the Plant is located; (3) to meet its obligations under the terms of its casinghead gas purchase contracts relating to the Plant, including but not by way of limitation residue gas for gas injection purposes; (4) to supply fuel for the drilling of wells in the area served by said Plant, although located on leases not owned by Seller nor under casinghead gas purchase contracts to Seller; (5) for fuel in the heating and maintenance of Seller's facilities, including the Plant and camp and any additions and alterations thereto; and (6) to meet Seller's obligations under that certain contract between Seller and Cabot Carbon Company, dated August 18, 1949, and any extension or renewal thereof, by virtue of which Seller has agreed to sell to Cabot Carbon Company an average quantity of Twenty Million (20,000,000) cubic feet* of gas per day.

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* Pressure base sixteen and four-tenths (16.4) pounds per square inch absolute.

e. Day shall mean the period of 24 consecutive hours beginning at 7:00 A.M. on one calendar day and ending at 7:00 A.M. on the following calendar day.

f. Month shall mean a period commencing at 7:00 A.M. on the first day of a calendar month and ending at 7:00 A.M. on the first day of the following calendar month.

g. Year, except where expressly stated otherwise, shall mean a period of 365 consecutive days beginning at 7:00 A.M. on the day and year first above written or on any anniversary thereof, provided that any such year which contains a date of February 29 shall consist of 366 consecutive days.

[542] *h. Contract Volume* shall mean seven million (7,000,000) cubic feet of surplus residue gas per day from the Gasoline Plant, unless and until the contract volume is changed under the provisions of this agreement. In case the term "contract volume" is used in relation to any period greater than a day, the number of cubic feet of gas constituting the contract volume as above defined shall be multiplied by the number of days included in such period.

ARTICLE II

Dedication

Seller hereby dedicates to the performance of its obligations under this agreement and for the term hereof all of Seller's surplus residue gas as herein defined.

ARTICLE III

Quantity

Section 1. Until such time as Seller shall notify Buyer in writing that Seller is in position to, and does by such notice, effectively dedicate to the performance of this agreement not less than seven twenty-sevenths (7/27) of the total quantity of residue gas available for sale from the Plant, Buyer shall purchase a portion of the surplus residue gas from the Plant but shall be under no obligation to purchase the full contract volume of surplus residue gas hereunder. The amount of surplus residue gas which Buyer shall purchase and receive and Seller will sell and deliver hereunder will vary from time to time and will depend upon operating conditions [543] of Buyer, upon the quantity of gas being purchased by Buyer from other sources, Buyer's marketing requirements and other conditions pertinent to Buyer's operations.

Section 2. Effective thirty (30) days after receipt by Buyer from Seller of the notice provided for in Section 1 of this Article III, the quantity of surplus residue gas to be sold and delivered by Seller and purchased and received by Buyer hereunder shall be governed by the provisions of Sections 3 to 8, inclusive, of this Article III.

Section 3. Subject to the provisions of this agreement, Seller agrees to sell and deliver and Buyer agrees to purchase and receive or to pay for whether or not received, commencing May 1, 1951 (delay due to force majeure excepted), the contract volume from time to time in effect hereunder, averaged annually, during such annual periods as Seller has such volume of sur-

plus residue gas available for sale. Seller shall not be required to deliver hereunder in any one day a volume of gas in excess of one and one-tenth (1.1) times the contract volume then in effect.

It is understood that Buyer may find it necessary to adjust its purchases of gas hereunder from time to time during each year to meet the fluctuating demands of Buyer's markets, but Buyer agrees to take and Seller agrees to deliver gas hereunder as nearly as practicable at uniform hourly and daily rates of flow. The quantity of gas purchased by Buyer during the preceding twelve (12) months period, or lesser period in the case of the first such determination, shall be [544] determined on July 1 of each year, and if such quantity is found to be less than the contract volume in effect during the preceding twelve (12) months period, then the difference between the total quantity of gas purchased and received during said period and the total contract volume in effect during said period shall be regarded as the "deficient volume" or as "deficient gas". If on any July 1 it shall be determined that a deficient volume of gas exists, then Buyer shall have the right during the following twelve (12) months period ending as of 7:00 A.M. on the next July 1, as and if surplus residue gas is available during said twelve (12) months period, to purchase and receive over and above the contract volume then in effect a volume of surplus residue gas not greater than the deficient volume. Buyer shall pay for deficient gas so taken at the weighted average price paid to Seller hereunder for gas taken during the twelve (12) months period such deficiency occurred. Within thirty (30) days after the end of the aforesaid twelve (12) months

period, Buyer shall pay Seller for all such deficient gas not so made up and paid for during the twelve (12) months period, at the weighted average price paid to Seller hereunder for gas taken during the twelve (12) months period such deficiency occurred.

In determining the amount which Buyer is obligated to pay Seller for such deficient gas, there shall be credited against the price per one thousand (1000) cubic feet which Buyer would otherwise be obligated to pay hereunder the price received by Seller for any such gas not taken by Buyer which Seller disposes of to any other purchaser, up to but not in excess of the price per one thousand (1000) cubic feet in effect under [545] this agreement; provided that any additional expense incurred by Seller in the sale of such gas for treating, compression and delivery, which is in excess of the normal expense in the sale of gas to Buyer, shall be deducted from the price received from such other purchaser before crediting the amount thereof against the price which Buyer would otherwise be obligated to pay hereunder.

Section 4. Any volume of surplus residue gas from said Gasoline Plant, which may from time to time be taken by Buyer from Seller in excess of the contract volume at the time in effect, shall be subject to all of the terms and provisions of this agreement, and except for gas taken to make up deficiencies as provided in Section 3 above shall be paid for at the price then applicable.

Section 5. In the event that on any day the deliveries of surplus residue gas by Seller hereunder are, by reason of non-availability of gas or causes within the con-

trol of Seller or force majeure intervention, less than the volume which Buyer is otherwise entitled to receive hereunder on such day, then for purposes of determining the average daily volume of gas taken by Buyer hereunder during the twelve (12) months period in which such day occurs, there shall be taken, in lieu of the volume of gas (if any) actually delivered to Buyer during such day, a volume equal to one and one-tenth (1.1) times the contract volume at the time in effect hereunder, or the quantity Buyer is ready and willing to take, whichever quantity is the lesser.

Section 6. If, at any time or times during the term of this agreement, Seller shall have or expect to have available at the Plant an average daily volume of surplus residue gas in [546] excess of the contract volume then in effect, Seller agrees that it will notify Buyer of that fact, specifying the amount of such additional volume of gas, the time when the same will be available for delivery, and the period during which Seller expects such additional volume to be available. Buyer agrees that it will purchase from Seller such additional volume of gas to the extent that Buyer has a market therefor and has facilities (exclusive of necessary stand-by equipment) installed for receiving, transporting and marketing such gas, the purchase thereof by Buyer to commence not later than sixty (60) days after the receipt by Buyer of such notice from Seller, unless a later date is specified in such notice for the commencement of deliveries of such additional volumes; and upon such commencement date, the contract volume previously in effect hereunder shall be increased by an amount equal to the additional volume

of gas tendered by Seller which Buyer is able to accept as aforesaid.

If Seller shall so notify Buyer of the availability or prospective availability of additional volumes of surplus residue gas from the Plant as in this Section 6 provided, and if Buyer at that time does not have a market for such additional volumes or does not have facilities installed to enable it to receive, transport and market the same, then Buyer shall have the right to elect, by notice served upon Seller within sixty (60) days after the receipt by Buyer of said notice from Seller, to purchase all or any part of such additional volume of gas for which Buyer does not then have a market or available facilities. If Buyer makes such election, it will promptly upon service of said notice to Seller proceed with all reasonable dispatch, if facilities [547] are needed, to acquire, construct, install or otherwise provide for the facilities required to enable Buyer to receive, transport and market the additional volume of gas so elected to be purchased by it, or if a market is needed, to acquire a market for said volume of gas, and shall commence taking such additional volume from Seller as soon as said facilities are completed or said market is obtained, as the case may be, but in no event later than one (1) year after the date of Buyer's said notice. Upon the commencement of deliveries of such additional volume of gas, or the expiration of one (1) year from the giving of said notice, whichever is the earlier date, the contract volume previously in effect hereunder shall be increased by the amount of such additional volume of gas which Buyer shall have elected to purchase as aforesaid, up to but not in excess

of the additional volume tendered in Seller's notice to Buyer as to the availability of such additional gas.

Section 7. If, at any time or times during the term of this agreement, Seller shall have additional volumes of surplus residue gas available for sale from the Plant, and upon tender of such gas to Buyer, Buyer does not have a market for such gas or does not have the necessary facilities installed to receive, transport and market such gas, and does not elect as hereinabove provided to install said facilities or obtain a market to enable it to purchase and receive said additional volume of gas, then Seller shall be free to sell to others all or any part of such additional volume which Buyer is not obligated hereunder to purchase or does not elect to purchase as hereinbefore provided, [548] but all such sales to others shall be subject and subservient to the rights of Buyer under this agreement.

Section 8. If at any time the average daily deliveries of surplus residue gas by Seller to Buyer from the Plant shall be reduced by as much as ten percent (10%) below the contract volume at the time in effect hereunder for a period of five (5) months duration, then Buyer at its option shall have the right to serve notice on Seller reducing the contract volume at the time in effect hereunder by such amount as Buyer shall specify in said notice, up to but not exceeding such deficiency in the aggregate average daily deliveries to Buyer from said Plant during such period; and Buyer shall have a like right on each successive occasion that the average daily deliveries of surplus residue gas by Seller to Buyer from the Plant are reduced by as much as ten percent (10%) below the contract volume at the

time in effect hereunder for a period of five (5) months duration.

ARTICLE IV

Delivery Point and Pressure

Section 1. The point of delivery for all gas sold and purchased hereunder shall be at the inlet of the meter station to be installed and operated by Buyer near the property line on the discharge side of the Plant. Title to all gas purchased and received hereunder shall pass from Seller to Buyer at the point of delivery.

Section 2. All gas deliverable hereunder at said delivery point shall be delivered at the pressure necessary [549] to enable said gas to enter Buyer's pipe line system, provided that Seller shall never be required to deliver gas at a pressure greater than six hundred and twenty-five pounds (625#) per square inch gauge.

ARTICLE V

Quality

Section 1. All gas delivered by Seller under the terms of this agreement shall conform to the following specifications:

a. Oxygen: The gas shall not at any time have an oxygen content in excess of two-tenths (0.2) of one percent (1%) by volume, and Seller shall make every reasonable effort to keep the gas free of oxygen.

b. Liquids: The gas shall be free from hydrocarbons in liquid form and shall be dehydrated to the extent that it will contain not more than nine pounds (9#) of water per one million (1,000,000) cubic feet of gas.

c. Hydrogen Sulphide: The gas shall not contain more than twenty-five hundredths (25/100) of one (1) grain of hydrogen sulphide per one hundred (100) cubic feet.

d. Organic Sulphur: The gas shall not contain more than five (5) grains of organic sulphur (mercaptans) per one hundred (100) cubic feet.

e. Carbon Dioxide: The gas shall not have a carbon dioxide content in excess of one percent (1%) by volume.

[550] *f. Dust, Gums, etc.:* The gas shall be commercially free of dust, gums and other solid matter.

g. Heating Value: From the date of commencement of deliveries of gas hereunder until January 1, 1956, the total gross heating value of the gas deliverable hereunder, to be paid for at the rates specified in Article IX hereof, shall not be less than one thousand and fifty (1050) British Thermal Units per cubic foot. If the total gross heating value of the gas delivered in any month prior to January 1, 1956, falls below one thousand and fifty (1050) British Thermal Units per cubic foot, then the price payable by Buyer for such gas shall be reduced by an amount determined by multiplying the sum which would otherwise be payable hereunder for such gas by a fraction, the numerator of which shall be the deficiency in total British Thermal Units per cubic foot below one thousand and fifty (1050) and the denominator of which shall be one thousand and fifty (1050). From and after January 1, 1956, the total gross heating value of the gas deliverable hereunder, to be paid for at the rates specified in Article IX hereof,

shall not be less than one thousand (1000) British Thermal Units per cubic foot.

Section 2. Within the limits of the minimum heating value specifications set forth above, Seller shall have the right before delivery of gas to Buyer to remove from the gas delivered hereunder any constituent thereof other than methane, and shall have the right to remove such [551] methane as is necessarily removed from the gas in the process of removing other constituents.

Section 3. Notwithstanding any other provision hereof, if the total gross heating value of the gas delivered hereunder falls below one thousand (1000) British Thermal Units per cubic foot, Buyer shall have the right to refuse to accept further deliveries hereunder so long as the total gross heating value of the gas remains below one thousand (1000) British Thermal Units per cubic foot. Buyer shall also have the right to refuse to accept any gas which at any time does not meet any of the other specifications set forth in this Article V.

ARTICLE VI

Metering

Section 1. Buyer, at its sole cost and expense, shall install and maintain at the point of delivery hereunder a standard type orifice meter or meters for measuring the volume of all gas purchased by Buyer from the Gasoline Plant, and Buyer shall cause said meters to be read each day. The meters and other facilities so installed at the point of delivery shall be constructed and installed in accordance with the specifications pre-

scribed by Report No. 2 of the Gas Measurement Committee of the American Gas Association dated May 6, 1935, and appendix thereto.

Section 2. Said meters and all meter readings and meter charts shall be accessible at all reasonable times [552] to inspection and examination by Seller, but the reading, calibration and adjustment of Buyer's meter and the changing of charts shall be done by Buyer.

Section 3. Each such meter shall be calibrated at least once each thirty (30) days by and at the expense of Buyer, but in the presence of Seller's representative. Buyer shall give Seller notice of each such calibration test in sufficient time to enable Seller to have its representative present. If upon any such test the measuring equipment is found to be no more than two percent (2%) erroneous, previous readings of such equipment shall be considered correct in computing the deliveries of gas hereunder, but such equipment shall be adjusted at once to read accurately. If upon any test the measuring equipment shall be found to be inaccurate in the aggregate by an amount exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, then any previous readings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, then for a period extending back one-half (½) of the time elapsed since the date of the last test. If for any reason any meter is out of service or out of repair, so that the volume of gas purchased cannot be ascertained or computed from the reading thereof, the volume of gas purchased during

the period such meter is out of service or out of repair [553] shall be estimated and agreed upon by the parties hereto on the basis of the best data available, using the first of the following methods which is feasible:

a. By using the registration of Seller's check meter, if installed and accurately registering;

b. By correcting the error in Buyer's meter, if the percentage of error is ascertainable by calibration test or mathematical calculation;

c. By estimating the volume of delivery, by using as a basis the volumes delivered during preceding periods under similar conditions when the meter was registering accurately.

Section 4. Seller may install, maintain and operate such check measuring equipment as it desires, provided that such check meter and equipment shall be so installed as not to interfere with the operation of the meters to be installed and maintained by Buyer at or near the point of delivery, as provided in Section 1 of this Article VI.

ARTICLE VII

Units of Volume

Section 1. The unit of volume for all purposes hereunder (except for computation of "quality" values under the provisions of Article V) shall be one (1) cubic foot at an [554] absolute pressure of fourteen and sixty-five hundredths pounds (14.65#) per square inch at a temperature of sixty (60) degrees Fahrenheit.

Section 2. The unit of volume for the determination of heating value under sub-paragraph *g* of Section 1 of

Article V hereof shall be the amount of gas, saturated with water vapor, which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit and under a pressure equivalent to thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

Section 3. The unit of volume for determination of quality values under sub-paragraphs *b*, *c* and *d* of Section 1 of Article V hereof shall be one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit and under a pressure equivalent to thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

ARTICLE VIII

Measurement

Section 1. All measurement of gas hereunder shall be in accordance with the recommendations for measuring gas contained in Report No. 2 of the Gas Measurement Committee of the American Gas Association dated May 6, 1935, including the appendix thereto, applied in a practical and appropriate manner, and correction shall be made for deviation from Boyle's Law. Deviation from Boyle's Law will be computed in accordance with Bulletin TS 461 of the California Natural Gasoline Association, 1947, or such other method as the parties may hereafter agree upon.

[555] Section 2. For the purpose of measurement, the average atmospheric (barometric) pressure shall be assumed to be thirteen and two-tenths pounds (13.2#) per square inch absolute, irrespective of the actual elevation or location of the point of delivery with respect to sea level or of variations in such barometric pressure from time to time.

Section 3. The temperature of the gas flowing through the meter or meters shall be determined by the use of a recording thermometer of standard manufacture, installed by Buyer so that it may properly record the temperature of the gas flowing through Buyer's meter or meters at the point of delivery. The arithmetrical average of the twenty-four (24) hour record, or of that portion of the twenty-four (24) hours during which gas was passing if gas had not been passing during the entire period, from the recording thermometer shall be taken to be the gas temperature for the day and shall be used to make proper corrections in volume computations.

Section 4. The specific gravity of the gas delivered hereunder shall be determined by the use of a recording gravitometer to be installed, maintained and operated by Buyer at the point of delivery. The arithmetical average of the hourly specific gravity during each twenty-four (24) hour period, or during that period which gas was actually passing, shall be used to make proper correction in volume computations.

[556] Section 5. The gross heating value of the gas shall be determined by Buyer at intervals of three (3) months or by means of recording calorimeters of the Thomas type, at the option of Buyer.

ARTICLE IX

Price

Section 1. The price per one thousand (1000) cubic feet to be paid by Buyer to Seller for all gas sold and delivered hereunder shall be as follows:

a. For the first five (5) year period, beginning with the initial date of delivery of gas hereunder, six point six nine nine eight cents (6.6998¢).

b. For the second five (5) year period, seven point five nine three one cents (7.5931¢).

c. For the third five (5) year period, eight point four eight six four cents (8.4864¢).

d. For the fourth five (5) year period and so long as this agreement is in effect, the weighted average price per one thousand (1000) cubic feet, quality and pressure considered, being paid at the commencement date of such five (5) year period for all gas sold and delivered from all gasoline plants located within a radius of two hundred and fifty (250) miles of the Town of Andrews, Texas (excluding, however, the following counties in the State of Texas: Carson, Potter, Gray, Wheeler, Hutchinson, Sherman, Hansford, and Moore), exclusive of sales to Buyer, but not less than nine point three seven nine seven cents (9.3797¢) per one thousand (1000) cubic feet.

[557] Section 2. If, at any time or times subsequent to the date of this agreement and so long as gas is delivered hereunder, there shall be in effect any agreement between Buyer and any other party or parties providing for the purchase of gas by Buyer at a point located within a radius of two hundred and fifty (250) miles of the Town of Andrews, Texas (excluding, however, the following counties in the State of Texas: Carson, Potter, Gray, Wheeler, Hutchinson, Sherman, Hansford, and Moore), at a price per one thousand (1000) cubic feet higher than the price at the same time payable by Buyer to Seller for gas hereun-

der, Buyer shall forthwith notify Seller of such fact and of the amount of such higher price, and thereupon the price at the time payable to Seller for gas hereunder shall be immediately increased so that it will equal the price payable at the same time under such other agreement, and such higher price hereunder shall continue in effect so long as, but only so long as, any such higher price is payable for gas by Buyer under any such other agreement. In determining whether the price payable under any such other agreement is "higher" than the price payable to Seller hereunder, due consideration shall be given to the provisions of this agreement as compared with the provisions of such other agreement as to quantity and quality of gas, delivery pressure, gathering and compressing arrangements, provisions regarding measurement of gas including deviation from Boyle's Law, taxes payable on or in respect of the gas delivered, and all other pertinent factors.

[558] ARTICLE X

BILLING

Section 1. On or before the tenth (10th) day of each calendar month, Buyer shall render Seller a statement showing the total volume of gas purchased during the preceding calendar month, and on or before the twentieth (20th) day of each calendar month, Buyer shall tender Seller its check payable to Seller or order for all such volumes so purchased. It is understood, however, that such statements and payments will be based upon Buyer's measurements and computations, and that the receipt and acceptance thereof shall not bind bind Seller or prevent Seller from correcting any er-

rors in any such statement or payment or any errors in measurement or computation upon which such statement or payment is based, until the expiration of one (1) year after rendition of such statement. Buyer shall be entitled to deduct from the amount due Seller all taxes upon or in respect to the surplus residue gas delivered hereunder, which are required to be borne by Seller under the provisions of Article XIV hereof, but which are required by law or regulation to be paid by Buyer. Seller shall account to and pay the royalty owners having interest in the gas delivered hereunder.

Section 2. Upon the request of Seller, Buyer shall furnish Seller with meter charts showing all volumes measured in any calendar month. Seller shall return to [559] Buyer all charts after they have been inspected, after which return the charts shall be kept on file by buyer for the mutual use of both parties for a period of six (6) years, and after expiration of said period of six (6) years Buyer may destroy said charts.

ARTICLE XI

TITLE

Seller hereby warrants the title to the gas delivered hereunder and that the same will be free from all liens and adverse claims.

ARTICLE XII

RESPONSIBILITY

Buyer shall not be responsible for the gas deliverable hereunder and shall be held harmless against any damage or injury caused thereby until same shall have been delivered to Buyer at the delivery point specified

in Article IV hereof, after which delivery Buyer shall be deemed in exclusive control and possession thereof and responsible for and shall hold Seller harmless against any injury or damage caused thereby.

ARTICLE XIII

Force Majeure

Section 1. Except for Buyer's obligation to make payments for gas delivered hereunder, neither party [560] hereto shall be liable for any failure to perform the terms of this agreement when such failure is due to "force majeure" as hereinafter defined. The term "force majeure" as employed in this agreement shall mean acts of God, strikes, lockouts or industrial disturbances, civil disturbances, arrests and restraint from rulers and people, interruptions by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the puble enemy, wars, riots, blockades, insurrections, inability to secure materials or labor, epidemics, landslides, lightning, earthquakes, fire, storms, floods, washouts, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or pipe lines, inability to obtain right of way, partial or entire failure of gas supply, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming force majeure. Nothing herein contained, however, shall be construed to require either party to settle a strike against its will.

Section 2. It is understood that either party may, without liability to the other party, interrupt the operations of its plants or pipe line system for the purpose

of making necessary alterations or repairs thereto, but that such interruptions shall be for only such time as may be reasonable. The party interrupting operations shall give the other party reasonable notice, except in case of emergency, of its intention so to interrupt operations and of the [561] estimated time during which no surplus residue gas will be taken or delivered, as the case may be.

ARTICLE XIV

Taxes

Seller shall bear all taxes assessed upon or in respect of the surplus residue gas delivered hereunder up to the delivery thereof to Buyer, and Buyer shall bear all taxes upon or in respect of such surplus residue gas on and after such delivery; provided that three-fourths (¾) of any and all increases after the date of execution of this agreement, in taxes of any kind (except ad valorem taxes on properties and income taxes) upon or with respect to the surplus residue gas delivered hereunder up to the delivery thereof by Seller to Buyer or upon the sale thereof by Seller to Buyer, shall be borne by Buyer, and one-fourth (¼) shall be borne by Seller, regardless of whether the increase results from an increase in the taxes now in existence or from the levy of new or additional taxes; provided that Buyer shall not be obligated to bear that part of any new or additional tax or taxes, which part is based upon or measured by the natural gasoline or other liquefied hydrocarbon content extracted from the gas before its delivery to Buyer hereunder.

[562]

ARTICLE XV

Term

This agreement shall be effective from the date hereof, and shall continue in force for a term of twenty (20) years from the date of initial delivery of surplus residue gas hereunder, and thereafter from year to year until cancelled by either party upon written notice given to the other party, not less than one hundred and eighty (180) days prior to the expiration of said twenty (20) years of any anniversary date thereof.

ARTICLE XVI

Successors and Assigns

This agreement shall bind and benefit the parties hereto and their respective successors and assigns, and shall be a covenant running with the Gasoline Plant; provided that no conveyance or transfer of any interest of either party shall be binding upon the other party until such other party has been furnished with written notice and true copy of such conveyance or transfer; provided, further, that either Buyer or Seller, or both, may assign its right, title and interest in, to and by virtue of this agreement, including any and all extensions, renewals, amendments and supplements thereto, to a trustee or trustees, individual or corporate, as security for bonds or [563] other obligations or securities, without such trustee or trustees assuming or becoming in any respect obligated to perform any of the obligations of the assignor, and provided, further, if any such trustee be a corporation, then such trustee may accept said assignment without its being required

by the parties hereto to qualify to do business in the State of Texas.

ARTICLE XVII

Notices

Section 1. Notices to be given hereunder shall be in writing and shall be deemed sufficiently given and served when and if deposited in the United States Mail, postage prepaid and registered, addressed to Gulf Oil Corporation, Post Office Box 1290, Fort Worth, Texas, or to El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas, as the case may be, or to such other address as either party shall respectively hereafter designate in writing.

Section 2. Routine communications, including monthly statements and payments, shall be considered as duly delivered when mailed, postage prepaid, by either registered mail or ordinary first class mail.

[564] In Witness Whereof, the parties hereto have caused this agreement to be executed, in duplicate originals, as of the day and year first above written.

Gulf Oil Corporation
"Seller"
/s/ By H. M. Craig, *Vice President*

Attest:
/s/ H. M. Craig, *Assistant Secretary*

El Paso Natural Gas Company
"Buyer"
/s/ By C. L. Perkins,
Vice President

Attest:
/s/ A. C. Martel, *Assistant Secretary*

[565] (VERIFICATION OMITTED IN PRINTING)

• • • • • • • • • •

[566]

EL PASO NATURAL GAS COMPANY
Tenth Floor Bassett Tower
El Paso, Texas

October 30, 1953

Gulf Oil Corporation
P. O. Drawer 1290
Fort Worth 1, Texas

Attention: Mr. Gordon H. Fisher

Re: Gulf Oil Corporation Waddell
Plant Residue Gas Contract

Gentlemen:

By letter dated October 19, 1953, Gulf Oil Corporation, hereinafter called "Gulf", advised El Paso Natural Gas Company, hereinafter called "El Paso", that effective as of July 1, 1954, Gulf will dedicate the total quantity of residue gas available for sale from its Waddell, Crane County, Texas, gasoline plant to the performance of that certain residue gas purchase agreement dated January 26, 1951, between Gulf, as Seller therein, and El Paso, as Buyer therein. Since El Paso will have a market and facilities for such gas, the same shall be covered by said residue gas purchase agreement, and this letter will serve to evidence the following amendments to said residue gas purchase agreement, all of which shall become effective as of July 1, 1954:

1.

Subsection *d.* of Article 1 of said residue gas purchase agreement shall be amended to be and read as follows:

"*d. Surplus Residue Gas* shall mean the residue gas in excess of the varying quantities required (1)for the operation and development of Seller's properties in the vicinity of said Plant, including but not by way of limitation residue gas for injection purposes; (2) to meet its obligations to its lessors under the terms of its oil, gas and mineral leases in the area in which the Plant is located; (3) to meet its obligations under the terms of its casinghead gas purchase contracts relating to the Plant, including but not by way of limitation residue gas for gas injection purposes; (4) to supply fuel for the drilling of wells in the area served by said [567] Plant, although located on leases not owned by Seller nor under casinghead gas purchase contracts to Seller; and (5) for fuel in the heating and maintenance of Seller's facilities, including the Plant and Camp and any additions and alterations thereto."

2.

Subsection *h.* of Article I of said residue gas purchase agreement shall be amended to be and read as follows:

"*h. Contract Volume* shall mean thirty million (30,000,000) cubic feet of surplus residue gas per day from the Gasoline Plant, unless and until the contract volume is changed under the provisions

of this agreement. In case the term "contract volume" as used in relation to any period greater than a day, the number of cubic feet of gas constituting the contract volume as above defined shall be multiplied by the number of days included in such period."

If the above correctly states Gulf's understanding concerning the matters covered herein, please indicate Gulf's agreement to the amendments above provided by executing two of the enclosed copies of this letter in the space provided below and returning the same to El Paso, attention Mr. D. H. Tucker, Vice President.

Very truly yours,

EL PASO NATURAL GAS COMPANY
/s/ By D. H. TUCKER, *Vice President*

ACCEPTED AND AGREED TO:
GULF OIL CORPORATION

/s/ By: G. U. FISHER, *Attorney-in-Fact*

[568]

Agreement

(RECEIVED MAY 23, 1956)

THIS AGREEMENT, made and entered into as of the 1st day of September, 1955, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, with offices in El Paso, Texas, hereinafter referred to as "El Paso", and Gulf Oil Corporation, a Pennsylvania corporation, with an office in Fort Worth, Texas, hereinafter called "Gulf",

WITNESSETH:

WHEREAS, heretofore under date of January 26, 1951, El Paso and Gulf entered into an agreement, subsequently amended from time to time, providing for the sale by Gulf to El Paso and the purchase by El Paso from Gulf of certain residue gas available from Gulf's Waddell Plant, located in Crane County, Texas, and

WHEREAS, Gulf has available at said Waddell Plant volumes of gas in excess of the volumes now provided in the residue agreement, and Gulf desires to sell to El Paso and El Paso desires to purchase from Gulf such additional gas;

NOW, THEREFORE, El Paso and Gulf agree as follows:

It is recognized that, in order for El Paso to receive delivery of the quantities of gas provided for in the residue agreement, as the residue agreement is amended and supplemented by this agreement, it will be necessary for El Paso to make application to the Federal Power Commission for a Certificate of Public

Convenience and [569] Necessity authorizing the construction of additional facilities to take delivery of the gas. El Paso shall proceed with due diligence and dispatch in an attempt to obtain such a certificate. If such a certificate is obtained by El Paso in form acceptable to it, El Paso shall then proceed with due diligence and dispatch to construct the necessary facilities in order to enable it to perform its obligation under the residue agreement, as the residue agreement is amended and supplemented by this instrument. The date when such facilities shall have been completed and placed in operation is hereinafter called the "effective date".

2.

If, at the expiration of one(1) year from the date of this agreement, El Paso shall not have obtained from the Federal Power Commission a Certificate of Public Convenience and Necessity in form acceptable to it covering the construction of its facilities contemplated hereunder, this agreement shall terminate at such time, and neither party hereto shall have any further liability to the other.

3.

On the effective date Subsection *h.* of Article I of said residue gas purchase agreement shall be amended to thereafter and read as follows:

> "*h. Contract Volume* shall mean forty million (40,000,000) cubic feet of surplus residue gas per day from the Gasoline Plant, unless and until the contract volume is changed under the provisions of this agreement. In case the term 'contract

> [570] volume' as used in relation to any period greater than a day, the number of cubic feet of gas constituting the contract volume as above defined shall be multiplied by the number of days included in such period."

4.

As hereby amended and supplemented, the residue gas purchase agreement dated January 26, 1951, shall remain in full force and effect.

IN TESTIMONY WHEREOF, this instrument is executed on this 17th day of October, 1955.

EL PASO NATURAL GAS COMPANY
/s/ By D. H. TUCKER
Vice President

GULF OIL CORPOGATION
/s/ Illegible -- -- ---- -- -- -- --
Vice President

ATTEST:
/s/ V. M. PLUMMER
Ass't. Secretary

ATTEST:
/s/ B. M. CRAIG
Ass't. Secretary

[571]

Agreement

(RECEIVED JANUARY 29, 1958)

THIS AGREEMENT, made and entered into as of the 15th day of December, 1956, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, with offices in El Paso, Texas, hereinafter referred to as "El Paso", and GULF OIL CORPORATION, a Pennsylvania corporation, with an office in Fort Worth, Texas, hereinafter called "Gulf",

WITNESSETH:

WHEREAS, heretofore under date of January 26, 1951, El Paso and Gulf entered into an agreement, subsequently amended from time to time, providing for the sale by Gulf to El Paso and the purchase by El Paso from Gulf of certain residue gas available from Gulf's Waddell Plant, located in Crane County, Texas, and

WHEREAS, Gulf has available at said Waddell Plant volumes of gas in excess of the volumes now provided in the residue agreement, and Gulf desires to sell to El Paso and El Paso desires to purchase from Gulf such additional gas;

NOW, THEREFORE, El Paso and Gulf agree as follows:

1.

It is recognized that, in order for El Paso to receive delivery of the quantities of gas provided for in the residue agreement, as the residue agreement is amended and supplemented by this agreement, it will be

necessary for El Paso to make application to the Federal Power Commission for a Certificate of Public Convenience and Necessity authorizing the construction of additional facilities to take delivery of the gas. El Paso shall proceed with due diligence and dispatch in an attempt to obtain such a certificate. If such a certificate is obtained by El Paso in form acceptable to it, El Paso shall then proceed with due diligence and dispatch to construct the necessary facilities in order to enable it to perform its obligation under the residue agreement, as the residue amendment is amended and [572] supplemented by this instrument. The date when such facilities shall have been completed and placed in operation is hereinafter called the effective date.

2.

If, at the expiration of one (1) year from the date of this agreement, El Paso shall not have obtained from the Federal Power Commission a Certificate of Public Convenience and Necessity in form acceptance to it covering the construction of its facilities contemplated hereunder, this agreement shall terminate at such time, and neither party hereto shall have any further liability to the other.

3.

On the effective date Subsection *h.* of Article I of said residue gas purchase agreement shall be amended to thereafter be and read as follows:

> "*h. Contract Volume* shall mean eighty million (80,000,000) cubic feet of surplus residue gas per day from the Gasoline Plant, unless and until the

contract volume is changed under the provisions of this agreement. In case the term 'contract volume' is used in relation to any period greater than a day, the number of cubic feet of gas constituting the contract volume as above defined shall be multiplied by the number of days included in such period.

4.

As hereby amended and supplemented, the residue gas purchase agreement dated January 26, 1951, shall remain in full force and effect.

EL PASO NATURAL GAS COMPANY
/s/ By D. H. TUCKER
Vice President

GULF OIL CORPORATION
/s/ By H. M. BAYER
Vice President

ATTEST:
/s/ V. M. PLUMMER
Ass't. Secretary

ATTEST:
/s/ B. M. CRAIG
Ass't. Secretary

[573]

Amendatory Agreement

This Amendatory Agreement made and entered into as of the 26th day of October, 1959, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation with an office in El Paso, Texas, hereinafter referred to as "El Paso", and WARREN PETROLEUM CORPORATION with an office in Tulsa, Oklahoma, hereinafter referred to as "Warren",

WITNESSETH:

WHEREAS, El Paso and Gulf Oil Corporation are parties to a certain Gas Purchase Agreement dated January 26, 1951, as amended, covering the sale of Residue gas by Gulf as "Seller", to El Paso as "Buyer" from the Waddell Plant located in Crane County, Texas, which contract as amended is hereinafter referred to as the "Waddell Contract", and

WHEREAS, Warren Petroleum Corporation has acquired the interest from Gulf Oil Corporation in said Waddell Contract, and

WHEREAS, the Waddell Contract contains a "Favored Nations" clause, and

WHEREAS, El Paso desires to eliminate such "Favored Nations" clause for the purpose of stabilizing its gas purchase prices in the Permian Basin area of West Texas and Southeastern New Mexico, and

WHEREAS, it is recognized that the continuance of the life of said Waddell Plant and the continuance of supplies of residue gas for delivery therefrom under said Waddell Contract as hereby being supplemented

and amended will be dependent upon the renewal [574] of existing Casinghead Gas Contracts and the obtaining of additional Casinghead Gas Contracts; and it is recognized by the parties that, in order for Warren to make such renewals and obtain such new contracts, the prices received by it for gas under said Waddell Contract as hereby supplemented and amended must be such that it will be competitive with other present and prospective Casinghead Gas purchasers;

NOW, THEREFORE, El Paso and Warren agree as follows:

Effective as of January 1, 1960, the Waddell Contract shall be amended as follows:

A. There is hereby added to Article II of said Waddell Contract the following unnumbered paragraph as follows:

"As a part of the consideration of this agreement, Seller agrees diligently and continually to undertake to renew the existing Casinghead Gas Contracts serving said Waddell Plant as such contracts expire and to obtain new contracts on supplies of gas available to said plant not previously contracted to Seller; provided that Seller shall not be required to obtain any new Casinghead Gas Contracts or renew any existing Casinghead Gas Contracts covering gas which, in its judgment, will be uneconomical for it to gather and process in said Waddell Plant."

B. Article IX shall be deleted in its entirety and the following substituted therefor:

"ARTICLE IX

PRICE

Section 1. The price to be paid by Buyer to Seller per one thousand (1,000) cubic feet for all gas sold hereunder shall be as follows:

[575] (a) For the period from January 1, 1960, until August 1, 1964, seventeen cents (17¢).

(b) For the five (5) year perod beginning August 1, 1964, eighteen cents (18¢).

(c) For the five (5) year period beginning August 1, 1969, and for each succeeding five (5) year period thereafter, the price for gas shall be increased one cent (1¢) per one thousand (1,000) cubic feet over the price in effect during the preceding five (5) year period.

Section 2. Seller shall have the right, at its option, to require a redetermination of the prices provided for in subparagraph (c) of Section 1 of this article. If Seller shall desire to exercise such option Seller shall give Buyer written notice of such desire not earlier than one hundred eighty (180) days nor later than one hundred twenty (120) days prior to August 1, 1969. If Seller shall make such request representatives of Buyer and Seller shall promptly meet and attempt to determine the price to be paid for the gas to be delivered under the provisions of this agreement for each of the five (5) year periods referred to in said subparagraph (c). The price for each such five (5) year period so determined at such time, or determined by arbitration as provided in Article XVIII hereof, shall represent, in the best

judgment of the parties making such determination, the probable fair market price for such gas at the beginning of each such period, but in no event shall the price for any such period be less than the price provided in said subparagraph (c). In making such determination consideration shall be given to all [576] pertinent factors."

C, The following Article XVIII, Arbitration, shall be added:

"ARTICLE XVIII

ARBITRATION

If after negotiations pursuant to the provisions of Section 2 of Article IX Buyer and Seller shall be unable to agree on said prices, the same shall be determined by arbitration in the following manner: Buyer shall appoint one arbitrator and Seller shall appoint one arbitrator and the two arbitrators so appointed shall select a third arbitrator. If either Buyer or Seller shall fail to appoint an arbitrator within ten (10) days after a request for such appointment is made by the other party in writing, or if the two arbitrators so appointed shall fail within ten (10) days after the appointment of the second of them to agree on a third arbitrator, the arbitrator or arbitrators necessary to complete a board of three arbitrators shall be appointed upon application by either party therefor by the United States District Judge, senior in point of service, of a Federal Judicial District in which some part of the property covered by this agreement is situated. In the event such judge shall fail or refuse to act, then either party hereto may request the American Arbitration

Association to select the arbitrator or arbitrators to complete the board of three. After three arbitrators are appointed pursuant to the foregoing provisions of this article they shall meet, hear the parties with respect to the matter of said prices, and arrive at a determination of said prices. Any determination agreed to in writing by at least two of said arbitrators shall be final and binding on [577] the parties hereto, subject to the provisions of Section 2 of Article IX. All arbitrators appointed pursuant to this article shall be individuals experienced in the oil and gas industry and competent to pass on the matter of said prices. The fees and expenses of the arbitrators shall be borne equally by the parties hereto."

D. Article XV, "Term", is hereby amended so that the portion thereof reading "from the date of initial delivery of surplus residue gas hereunder", is deleted, and the words "from January 1, 1960," substituted therefor.

E. It is agreed that the tax reimbursement provisions of Article XIV of the Waddell Contract are effective as to all increases in taxes specified occurring from and after January 1, 1950.

F. It is recognized that this Amendatory Agreement, when properly executed and filed with the Federal Power Commission, will become a supplement to Seller's Rate Schedule No. 43 on file with said Commission, and Seller agrees to make such filings. Seller further agrees to furnish Buyer copies of all Federal Power Commission filings made pursuant hereto, and shall furnish Buyer copies of all

orders, communications, etc., that Seller may receive from the Commission with respect thereto.

Except as herein specifically supplemented and amended, all [578] other terms of the Waddell Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate originals, on this day and year first above written.

EL PASO NATURAL GAS COMPANY

By /s/ D. H. TUCKER
D. H. Tucker
Vice President

WARREN PETROLEUM CORPORATION

By /s/ (Illegible)
President

ATTEST:
/s/ (Illegible)
Assistant Secretary

ATTEST:
/s/ DON M. MATTOCK
Secretary

[579]

Amendment of Residue Gas Purchase Agreement

THIS AGREEMENT, made and entered into as of the 17th day of April, 1972, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, hereinafter called "Buyer," and WARREN PETROLEUM COMPANY, A DIVISION OF GULF OIL CORPORATION, hereinafter called "Seller,"

WITNESSETH:

WHEREAS, Buyer and Seller are parties to that certain Residue Gas Purchase Contract dated January 26, 1951, covering the sale of surplus residue gas by Seller to Buyer from the Waddell Gasoline Plant, Crane County, Texas, which said contract, as heretofore amended and supplemented, is hereinafter referred to as the "Waddell Plant Contract"; and

WHEREAS, the Waddell Plant Contract is in full force and effect; and

WHEREAS, Buyer and Seller now desire to further amend the Waddell Plant Contract in the particulars hereinafter set forth:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, Buyer and Seller agree as follows:

1.

Effective as of the date hereof, the Waddell Plant Contract shall be amended as follows:

A. Section 2 of Article IX, *"Price,"* shall be deleted in its entirety and the following substituted therefor.

[580] "Section 2. If the Federal Power Commission, or any successor governmental authority having jurisdiction in the premises, shall at any time hereafter prescribe a rate for the purchase and sale of gas of a similar quality in the area in which Seller's said Plant is situated higher than the price herein provided to be paid, then the price to be paid by Buyer to Seller for surplus residue gas hereunder shall be increased effective as of the date such higher rate is prescribed to equal such higher rate; provided, however, that Buyer shall have the right, at its option, to intervene in any rate proceeding held to give consideration to any rate higher than those provided for herein, to oppose therein any such higher rate, and in the event such higher rate is prescribed, to seek relief therefrom in any regulatory agency or any court having jurisdiction, but such relief, if obtained, shall not result in a price hereunder which is less than the price set out in this article. Whenever the provisions of this Section 2 effectuate an increase in price, such increased price shall thereupon be substituted for and become the applicable contract price hereunder and shall thereafter be subject to the same future periodic increases in the contract price as provided in Section 1 of this Article."

B. The phrase "from January 1, 1960" appearing in the first paragraph of Article XV, "*Term,*" shall be deleted in its entirety and the phrase "from January 1, 1972" substituted therefor.

[581] C. Article XVIII, "*Arbitration,*" shall be deleted in its entirety and be of no further force or effect.

2.

As herein specifically supplemented and amended, the Waddell Plant Contract shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate originals on this day and year first above written.

"BUYER"

EL PASO NATURAL GAS COMPANY

By /s/ A. M. DERRICK
A. M. Derrick
Asst. Vice President

"SELLER"

WARREN PETROLEUM COMPANY,

A DIVISION OF GULF OIL CORPORATION
By /s/ L. W. MILLER
Vice President

ATTEST:
/s/ (Illegible)
Assistant Secretary

ATTEST:
/s/ BRIAN E. HARDEN
Assistant Secretary

[596] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connolo and Arthur Kline.

Docket No. G-13445

In the Matter of
GULF OIL CORPORATION

(Issued February 24, 1958)

Findings and Order Issuing Certificate of Public Convenience and Necessity

On October 14, 1957, Gulf Oil Corporation (Applicant), an independent producer of natural gas, filed in Docket No. G-13445 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of an additional 40,000 Mcf of residue natural gas per day to El Paso Natural Gas Company from Gulf's Waddell Gasoline Plant in Crane County, Texas.

It appears that additional capacity at Waddell Plant will become operative in January 1958, making this additional supply available.

Temporary authorization to make the additional sale of natural gas as requested in this proceeding was granted to Gulf Oil Corporation on January 2, 1958.

Pursuant to due notice, a public hearing was held in Washington, D. C., on February 13, 1958, respect-

ing the matters involved in and the issues presented by this application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and that the Commission render a decision herein pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Gulf Oil Corporation, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas hereinbefore described, as more fully [597] described in the application herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant, together with the construction and operation of any facilities

subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) A request during the public hearing by staff counsel for omission of the intermediate decision procedure was unopposed by any party of record and, not having been denied by the Commission, is granted pursuant to Section 1.30 (c)(1) of the Commission's Rules of Practice and Procedure.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Gulf Oil Corporation of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission used for the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate issued herein shall be deemed accepted and of full force and effect unless refused in writing and under oath by Applicant within 30 days of the date of issuance of this order.

(C) This certificate is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Section 154 of the Commission's Regulations thereunder requiring the filing [598] of rate schedules for the service herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provision in the gas purchase contract herein involved.

By the Commission

/s/ JOSEPH H. GUTRIDE
Joseph H. Gutride,
Secretary

[582]

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[583]

Residue Gas Purchase Agreement

THIS AGREEMENT, made and entered into as of the 1st day of March, 1972, by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation, hereinafter called "Buyer," and WARREN PETROLEUM COMPANY, A Division of Gulf Oil Corporation, hereinafter called "Seller,"

WITNESSETH:

WHEREAS, Seller owns and operates the Waddell Gasoline Plant located in Crane County, Texas, which plant is hereinafter referred to in this agreement as the "Waddell Plant" or the "said Plant"; and

WHEREAS, Seller sells and delivers to Buyer and Buyer purchases and receives from Seller volumes of surplus residue gas from said Plant pursuant to the terms and provisions of that certain Residue Gas Purchase Agreement between Seller and Buyer dated January 26, 1951, which agreement, together with all amendments thereto, is hereinafter referred to in this agreement as the "Waddell Plant Residue Gas Purchase Agreement"; and

WHEREAS, in order to assure a continuing supply of raw gas to the Waddell Plant for processing therein and the delivery to Buyer of the resultant volumes of surplus residue gas attributable thereto, Seller, in contemplation of this agreement, has either entered into or will enter into certain new Waddell Plant Producer Supply Gas Purchase Contracts and contemplates that it will, by virtue of this agreement, be able to renew or extend certain other [584] of

its Waddell Plant Producer Supply Gas Purchase Contracts and to acquire additional new Waddell Plant Producer Supply Gas Purchase Contracts; and

WHEREAS, Buyer and Seller have agreed on the purchase and sale of the aforesaid resultant volumes of surplus residue gas under the terms and provisions of this agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, Buyer and Seller agree as follows:

ARTICLE I

ADOPTION BY REFERENCE

To the extent not in variance with the terms and provisions of this agreement, all terms and provisions of the Waddell Plant Residue Gas Purchase Agreement are hereby adopted by reference, insofar as such terms and provisions pertain to the delivery by Seller and receipt by Buyer of volumes of surplus residue gas hereunder from said Plant with the same effect as though copied herein at this point.

ARTICLE II

GOVERNMENTAL AUTHORIZATIONS

Section 1. Buyer represents that it holds a Certificate of Public Convenience and Necessity issued by the Federal Power Commission (or otherwise has the necessary authority) covering the construction, ownership, and operation of the facilities necessary in order for Buyer to perform its obligations under the provisions of this agreement. Promptly after

the date of this agreement and [585] from time to time thereafter as may be necessary, Seller shall make such applications and filings to and with the Federal Power Commission as may be required on the part of Seller in order to procure such Certificate of Public Convenience and Necessity and other approvals as may be necessary in order for Seller to effect delivery of surplus residue gas under the provisions of this agreement or to otherwise perform its obligations hereunder. Seller further agrees to furnish to Buyer copies of all such filings and copies of all orders that Seller may receive from such Commission with respect to the sale of surplus residue gas hereunder.

Section 2. In the event Seller shall not have received and accepted the Certificate of Public Convenience and Necessity referred to in Section 1 of this Article within a period of ninety (90) days from the date of filing of its application therefor, then either Buyer or Seller may at any time thereafter while such condition continues, give written notice to the other party that it desires to terminate this agreement. If any such notice is given, this agreement shall terminate thirty (30) days after the date on which such notice is given, unless at the end of such thirty (30) day period Seller shall have received and accepted said Certificate of Public Convenience and Necessity. If this agreement shall terminate pursuant to the provisions of this Section, neither Buyer nor Seller shall thereafter have any further liability under this agreement to the other.

Section 3. If Seller shall receive and accept the Certificate of Public Convenience and Necessity re-

ferred to in Section 1 [586] of this Article prior to any termination of this agreement pursuant to the provisions of Section 2 of this Article, it shall so notify Buyer and first deliveries of surplus residue gas shall commence hereunder on the date Seller shall have tendered surplus residue gas for sale to Buyer hereunder.

ARTICLE III

Commitment

Seller represents that, in contemplation of this agreement and in furtherance of its continuing endeavors to deliver volumes of surplus gas to Buyer from said Plant, Seller has either entered into or will enter into certain new Waddell Plant Producer Supply Gas Purchase Contracts and contemplates that it will renew or extend certain other of its existing Waddell Plant Producer Supply Gas Purchase Contracts and that it will acquire additional new Waddell Plant Producer Supply Gas Purchase Contracts. Accordingly, Seller hereby commits to the performance of its obligations under this agreement all volumes of surplus residue gas attributable to raw gas delivered to and processed in said Plant from the raw gas sources set forth in Exhibit "A" hereto under such renewed, extended and new Waddell Plant Producer Supply Gas Purchase Contracts and as may be set forth in said Exhibit "A" as subsequently amended in the manner hereinafter provided. Said commitment shall also include all volumes of surplus residue gas attributable to raw gas delivered to and processed in said Plant from those properties owned by Gulf Oil Corporation (Gulf), as may be

set forth in said Exhibit "A" as subsequently amended in the manner hereinafter provided, which [587] are developed by Gulf from and after the date of this agreement, provided that Seller shall have the right to at any time limit any further such commitments by subjecting such commitments to an agreement with Buyer of similar content and purpose hereof. The applicable Waddell Plant field gas metering stations and numbers assigned thereto by which such raw gas is measured and subsequently delivered to said Plant for processing as of the date of this agreement are described on Exhibit "A" hereto. Seller shall have the continuing right from time to time and at any time to amend said Exhibit "A" by giving Buyer written noice of its desire to so amend, specifying in such notice those Waddell Plant field gas metering stations and numbers assigned thereto along with other data consistent with the requirements of said Exhibit "A" applicable to any new and/or renegotiated Waddell Plant Producer Supply Gas Purchase Contracts entered into by Seller subsequent to the date of this agreement, or those field metering stations and numbers assigned thereto along with such other required data applicable to raw gas from properties owned and developed by Gulm as aforesaid. Upon receipt of any such notice by Buyer, said Exhibit "A" shall be deemed amended accordingly.

ARTICLE IV

Residue Gas Allocation

Computation of the volumes of surplus residue gas delivered to Buyer from the Waddell Plant under this agreement and the volumes of surplus residue gas delivered to Buyer from said Plant under the Waddell Plant Residue Gas Purchase Agreement requires an allocation of the combined surplus residue gas stream delivered to Buyer from [588] said Plant. It is agreed that the volumes of surplus residue gas delivered to Buyer by Seller from said Plant under this agreement and under the Waddell Plant Residue Gas Purchase Agreement, as well as any future agreements of similar content and purpose, shall be determined in accordance with the allocation procedures set forth in Exhibit "B" hereto attached and made a part hereof. Alteration of or addition to these procedures may become desirable during the term hereof. However, no such alterations or additions shall be effective except as mutually agreed between the parties.

ARTICLE V

Price

Section 1. The price to be paid by Buyer to Seller per one thousand (1,000) cubic feet of surplus residue gas sold and delivered from said Plant under this agreement shall be as follows:

(a) For the period commencing on the date of first delivery of residue gas hereunder and continuing until January 1, 1973, thirty cents (30¢).

(b) For the one (1) year period commencing January 1, 1973, and continuing until January 1, 1974, thirty-one cents (31¢).

(c) For the next one (1) year period and for each succeeding one (1) year period thereafter, the price to be paid by Buyer to Seller shall be increased one cent (1¢) over the price herein provided to be paid during the preceding one (1) year period.

In the event the average total gross heating value each month of [589] surplus residue gas shall be either more or less than one thousand (1,000 British thermal units per cubic foot, then the price otherwise payable pursuant to either (a), (b), or (c) above for surplus residue gas shall be either increased or reduced. Such reduced or increased price shall be determined by multiplying the price otherwise payable pursuant to either (a), (b), or (c) above by a fraction, the numerator of which is the actual total gross heating value of such gas, expressed in British thermal units per cubic foot, and the denominator of which is one thousand (1,000). The actual total gross heating value of surplus residue gas, measured at the point of delivery hereunder, shall be determined each month. The unit of volume for the determination of such total gross heating value shall be the amount of gas, on a dry basis, which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit and under a pressure equivalent to thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

Section 2. If the Federal Power Commission, or any successor governmental authority having jurisdiction in the premises, shall at any time hereafter prescribe a rate for the purchase and sale of gas of a similar quality in the area in which Seller's said Plant is situated higher than the price herein provided to be paid, then the price to be paid by Buyer to Seller for surplus residue gas hereunder shall be increased effective as of the date such higher rate is prescribed to equal such higher rate; provided, however, that Buyer shall have the right, at its option, to intervene in any rate proceeding held to give consideration to any rate higher than those [590] provided for herein, to oppose therein any such higher rate, and in the event such higher rate is prescribed, to seek relief therefrom in any regulatory agency or any court having jurisdiction, but such relief, if obtained, shall not result in a price hereunder which is less than the price set out in this article. Whenever the provisions of this Section 2 effectuate an increase in price, such increased price shall thereupon be substituted for and become the applicable contract price hereunder and shall thereafter be subject to the same future periodic increases in the contract price as provided in Section 1 of this article.

ARTICLE VI

Term

This agreement shall become effective as of the date hereof and, unless sooner terminated in accordance with the provisions of Article II hereof, shall remain in force and effect for a term ending January 1, 1987.

In witness whereof, the parties hereto have caused this agreement to be executed in duplicate originals as of the day and year first above written.

"Buyer"

El Paso Natural Gas Company

By /s/ A. M. Derrick
A. M. Derrick
Asst. Vice President

"Seller"

Warren Petroleum Company,
A Division of Gulf Oil Corporation

By /s/ L. W. Miller
Vice President

Attest:
/s/ (Illegible)
Assistant Secretary

Attest:
/s/ Brian E. Harden
Assistant Secretary

[591]

Exhibit "A"

(Attached to Residue Gas Purchase Agreement of March 1, 1972, between Warren Petroleum Company, a Division of Gulf Oil Corporation, and El Paso Natural Gas Company)

WADDELL PLANT

Meter Station Number	Lease Operator	Lease Name	Lease Description
64-769	Amoco Prod. Co.	J. McGee "A"	All Sec. 1, Blk. 32, PSL Crane County, Texas

(New contract dated 2-7-72. Replaces old contract dated 9-27-66. Firm term of new contract is for period of ten years beyond firm term of old contract).

64-640	Amoco Prod. Co.	University "AH"	SW/4 Sec. 3, Blk. 31 University Land Crane County, Texas

(New contract dated 2-7-72. Replaces old contract dated 9-6-56. Firm term of new contract is for period of ten years beyond firm term of old contract).

64-774	Gulf Oil Corp.	State "EC"	NE/4 Sec. 4, Blk. 30, University Lands
		State "EI"	NW/4 Sec. 3, Blk. 30, University Lands
64-772	Gulf Oil Corp.	State "ED"	SW/4 & W/2 SE/4 Sec. 3, Blk. 30, University Lands
64-700	Gulf Oil Corp.	State "EE"	SE/4 Sec. 9, Blk. 30, University Lands

Meter Station Number	Lease Operator	Lease Name	Lease Description
64-467]] 64-699]	Gulf Oil Corp.	State "EF"	N/2 Sec. 10, Blk. 30, University Lands
64-698]] 64-466]	Gulf Oil Corp.	State "EG"	S/2 Sec. 10, Blk. 30 University Lands
64-700A	Gulf Oil Corp.	State "EJ"	SW/4 Sec. 9, Blk. 30 University Lands Crane County, Texas

(New contract as to *Amoco Prod. Co.'s 50% interest* in above leases dated 2-7-72. Replaces old contract dated 4-24-63. Firm term of new contract is for period of ten years beyond firm term of old contract).

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64-617	Gulf Oil Corp.	McKnight-Crowley (below a depth of 3,800 feet)	SW/4 SW/4 & S/2 NW/4 SW/4 & S/2 NE/4 SW4 & NE/4 NE/4 SW/4 & N/2 SE/4 SW/4 & SW/4 SE/4 SW/4 Sec. 10, Blk. B-21 Public School Land Crane County, Texas

(New contract as to *W. H. Black, et al, 50% interest* in above lease dated 2-7-72. Replaces old contract dated 9-6-56. Firm term of new contract is for period of ten years beyond firm term of old contract).

64-705	W. Ridley Wheeler Estate	J. H. Edwards	N/2 NW/4 & S/2 NE/4 Sec. 19, Blk. B-17 Public School Land Crane County, Texas

(New contract as to *71.875% interest* dated 2-23-72. Replaces old contract dated 4-20-64. Firm term of new contract is for period of ten years beyond firm term of old contract).

[593]

Exhibit "B"

(Attached To Residue Gas Purchase Agreement Dated As Of March 1, 1972, Between El Paso Natural Gas Company And Warren Petroleum Company, A Division Of Gulf Oil Corporation.)

Residue Gas Allocation Procedure

The volume of "residue gas remaining" from the gas delivered to Seller's gas processing plant from each lease connected thereto shall be determined by (1) multiplying the volume of such gas delivered from such lease by the applicable theoretical percentage as shown in the following table, the result being the "theoretical volume of residue gas remaining" from the gas delivered from such lease, (2) dividing the "total actual volume of residue gas remaining" (determined in the manner hereinafter provided) from all gas delivered to said plant by the total "theoretical volume of residue gas remaining" from all gas delivered to said plant (the latter being the sum of the theoretical volumes for all leases from which gas is delivered to said plant) and expressing the results in percentage, and (3) multiplying the "theoretical volume of residue gas remaining" from such lease by said last mentioned percentage. The "total actual volume of residue gas remaining" from all gas delivered to said plant as used herein shall mean that volume of residue gas remaining, after the extraction of liquefiable hydrocarbons, from all gas processed in said plant, less the volume of residue gas necessary for plant operation. Said "total actual volume of residue gas remaining" shall be measured

by suitable orifice meters of standard make to be installed and kept in repair by Seller at the various points where the gas is delivered to producers and to purchasers (if not measured by purchasers) and to flare. It is provided, however, that Seller shall not be required to measure deliveries [594] of small quantities of gas which would not, in Seller's judgment, justify a meter installation; and the volumes of such deliveries shall be estimated by Seller in accordance with methods followed generally in the natural gasoline industry.

The volume of residue gas available for sale from the gas delivered from each lease shall be the remainder obtained by subtracting the volume, determined either by estimate or measurement, that Seller delivered to such lease for lease operations from the volume of "residue gas remaining." The volume of residue gas sold hereunder and attributable to gas purchased by Seller from the leases described in Exhibit "A" shall be deemed to be that proportionate part of the total volume of residue gas sold from said plant by Seller to Buyer which the total volume of residue gas available for sale from said leases described in said Exhibit "A" bears to the total volume of residue gas available for sale from all gas delivered to Seller for processing in such plant.

Examination by Buyer of the records kept by Seller respecting such gas allocation shall be permitted by Seller at any and all reasonable hours. All statements rendered by Buyer to Seller during any calendar year shall be conclusively presumed to be true and correct after 24 months following the end of any such calendar year unless within such 24

month period Buyer takes written exception thereto and makes claim on Seller for adjustment. Failure on the part of Buyer to make claim on Seller for adjustment within such period shall establish the correctness thereof and preclude the filing of exceptions thereto or making of claims for adjustment thereof.

[595]

Theoretical Percentage of Casinghead Gas Remaining as Residue After Extraction of Gasoline and Plant Use Based Upon Gasoline Content in Gallons Per 1,000 Cubic Feet (G.P.M.), Such Gasoline Content to be Determined Periodically As Provided In Seller's Gas Purchase Contracts By Field Compression Test Or Charcoal Test Made In Accordance With The Official Code Of The Natural Gas Processors' Association For Testing Natural Gas For Gasoline Content.

G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%
.00	93.60	2.00	72.90	4.00	54.30	6.00	38.30	8.00	25.10	10.00	13.70	12.00	3.50
.05	93.10	2.05	72.45	4.05	53.85	6.05	37.90	8.05	24.80	10.05	13.34	12.05	3.25
.10	92.60	2.10	72.00	4.10	53.40	6.10	37.50	8.10	24.50	10.10	13.00	12.10	3.00
.15	92.10	2.15	71.50	4.15	52.95	6.15	37.20	8.15	24.25	10.15	12.75	12.15	2.75
.20	91.50	2.20	71.00	4.20	52.50	6.20	36.90	8.20	24.00	10.20	12.50	12.20	2.50
.25	91.05	2.25	70.50	4.25	52.15	6.25	36.55	8.25	23.65	10.25	12.25	12.25	2.30
.30	90.50	2.30	70.10	4.30	51.80	6.30	36.20	8.30	23.30	10.30	12.00	12.30	2.10
.35	90.05	2.35	69.60	4.35	51.30	6.35	35.80	8.35	22.95	10.35	11.75	12.35	1.85
.40	89.60	2.40	69.10	4.40	50.80	6.40	35.40	8.40	22.60	10.40	11.50	12.40	1.60
.45	89.00	2.45	68.65	4.45	50.40	6.45	35.10	8.45	22.30	10.45	11.25	12.45	1.40
.50	88.40	2.50	68.20	4.50	50.00	6.50	34.80	8.50	22.00	10.50	11.00	12.50	1.20
.55	87.85	2.55	67.70	4.55	49.65	6.55	34.45	8.55	21.70	10.55	10.75	12.55	.90
.60	87.30	2.60	67.20	4.60	49.30	6.60	34.10	8.60	21.40	10.60	10.50	12.60	.60
.65	86.80	2.65	66.70	4.65	48.85	6.65	33.80	8.65	21.10	10.65	10.25	12.65	.35
.70	86.30	2.70	66.20	4.70	48.40	6.70	33.50	8.70	20.80	10.70	10.00	12.70	.10
.75	85.75	2.75	65.75	4.75	47.95	6.75	33.15	8.75	20.55	10.75	9.75		
.80	85.20	2.80	65.30	4.80	47.50	6.80	32.80	8.80	20.30	10.80	9.50		
.85	84.70	2.85	64.90	4.85	47.15	6.85	32.50	8.85	20.05	10.85	9.25		
.90	84.20	2.90	64.50	4.90	46.80	6.90	32.20	8.90	19.80	10.90	9.00		
.95	83.65	2.95	63.95	4.95	46.35	6.95	31.85	8.95	19.50	10.95	8.75		
1.00	83.10	3.00	63.40	5.00	45.90	7.00	31.50	9.00	19.20	11.00	8.50		
1.05	82.50	3.05	62.95	5.05	45.50	7.05	31.15	9.05	18.85	11.05	8.25		
1.10	81.90	3.10	62.50	5.10	45.10	7.10	30.80	9.10	18.50	11.10	8.00		
1.15	81.40	3.15	62.00	5.15	44.75	7.15	30.50	9.15	18.20	11.15	7.70		
1.20	80.90	3.20	61.50	5.20	44.20	7.20	30.20	9.20	17.90	11.20	7.40		
1.25	80.40	3.25	61.00	5.25	43.85	7.25	29.85	9.25	17.60	11.25	7.20		
1.30	79.90	3.30	60.50	5.30	43.50	7.30	29.50	9.30	17.30	11.30	7.00		
1.35	79.45	3.35	60.15	5.35	43.05	7.35	29.25	9.35	17.05	11.35	6.75		
1.40	79.00	3.40	59.80	5.40	42.60	7.40	29.00	9.40	16.80	11.40	6.50		
1.45	78.50	3.45	59.30	5.45	42.25	7.45	28.65	9.45	16.50	11.45	6.25		
1.50	78.00	3.50	58.80	5.50	41.90	7.50	28.30	9.50	16.20	11.50	6.00		
1.55	77.50	3.55	58.35	5.55	41.55	7.55	28.00	9.55	16.00	11.55	5.80		
1.60	77.00	3.60	57.90	5.60	41.20	7.60	27.70	9.60	15.80	11.60	5.60		
1.65	76.50	3.65	57.40	5.65	40.80	7.65	27.30	9.65	15.50	11.65	5.35		
1.70	76.00	3.70	56.90	5.70	40.40	7.70	26.90	9.70	15.20	11.70	5.10		
1.75	75.50	3.75	56.55	5.75	40.15	7.75	26.70	9.75	14.95	11.75	4.85		
1.80	75.00	3.80	56.20	5.80	39.90	7.80	26.50	9.80	14.70	11.80	4.60		
1.85	74.50	3.85	55.75	5.85	39.50	7.85	26.20	9.85	14.45	11.85	4.35		
1.90	74.00	3.90	55.30	5.90	39.10	7.90	25.90	9.90	14.20	11.90	4.10		
1.95	73.45	3.95	54.80	5.95	38.70	7.95	25.50	9.95	13.95	11.95	3.80		

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[599]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Notice of Certificates of Public Convenience and Necessity Issued to Producer Respondents Pursuant to Opinion No. 662 and Designation of FPC Gas Rate Schedules and Gas Rate Schedule Supplements Accepted for Filing

(July 22, 1974)

By Opinion No. 662 and order issued August 7, 1973, in Docket No. AR70-1 (Phase I), mimeo, p. 20, paragraph (J), the Commission issued certificates of public convenience and necessity to producer respondents based upon applications pending on the effective date of the opinion.[1] The opinion did not further identify the particular producer respondents or the dockets in which the applications had been filed. In order that the applicants might be advised of the disposition of their applications there is affixed as Appendix hereto a definitive list of the affected applications.

The applicants have filed FPC gas rate schedules or supplements to rate schedules on file with the Commission proposing to initiate, add, delete, or succeed in part to natural gas service in interstate commerce.

[1] The statutory hearing for those certificate applications, for sales in the Permian Basin, which had been noticed and for which the period for filling protests or interventions had expired prior to August 7, 1973, is considered to have been held when Opinion No. 662 and order were acted on by the Commission and permanent certification of such applications was accomplished by ordering paragraph (J) thereof. Those applications which either had not been noticed prior to August 7, 1973, or for which the notice period had not yet expired do not fall within the purview of Opinion No. 664's statutory hearing and have been issued separately or will be considered in the future.

Those FPC gas rate schedules or rate schedule supplements are now or have heretofore been accepted for filling and designated as indicated in the Appendix hereto.

KENNETH F. PLUMB
Secretary

[600]

DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

Rate Schedule Designation: A - Initial Service; B - Amendment; C - Amendment to add acreage; D - Amendment to delete acreage; E - Total Succession; F - Partial Succession

Docket No. and Date Filed	Rate Schedule Designation	Applicant	Purchaser and Location	FPC Gas Rate Schedule Description and date of document 1/	Number	Supp.
C-11580 3-2-73	C	Sohio Petroleum Company (Operator), et al.	Northern Natural Gas Company (North Eunice San Andres Gas Pool, Lea County, New Mexico)	Amend. Agree 2-2-73	63	11
C161-1332 3-28-72	C	Cities Service Oil Company (Operator)	Transwestern Pipeline Company (Bluitt Gasoline Plant, Roosevelt County, New Mexico)	Amendment 1-24-72 Contract 1-24-72	213 213	6 7
C163-708 4-14-72 4-24-72	C	CRA, Inc.	Northern Natural Gas Company (Dove Creek and Velrex Fields, Irion and Schleicher Counties, Texas)	Amend. Agree. 4-21-72 Letter 7-17-72	49 49	26 1 to 26
C163-708 6-11-73	C	CRA, Inc.	Northern Natural Gas Company (Las Perlas Field, Irion County, Texas)	Amend. Agree. 3- 1-73 (Effective Date: Date of Initial Delivery)	49	29
C164-708 4-16-73 2/	D	Gulf Oil Corporation (Operator), et al.	Transwestern Pipeline Company (Worshan Bayer Ellenburger Field, Reeves County, Texas)	Letter Agree. 1-25-73	373	9
C165-561 3-6-72	C	Cities Service Oil Company (Operator).	Natural Gas Pipeline Company of America (Bluitt Gasoline Plant, Roosevelt County, New Mexico)	Amendment 3- 1-71 Contract 3- 1-71	214 214	10 11
C165-606 A 1-17-66		Exxon Corporation	El Paso Natural Gas Company (Cooper Jal Field, Lea County, New Mexico)	Contract 11-3-52 Supp. Agree. 1- 1-61 Supp. Agree. 12-21-65	386 386 386	- 1 2

1/ Where no effective date is shown, the rate schedule filing has heretofore been accepted.

2/ Acreage being deleted is being added to another contract with the same buyer in Docket No. C173-695.

[601]

DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

Rate Schedule Designation: A - Initial Service; B - Amendment; C - Amendment to add acreage; D - Amendment to delete acreage; E - Total Succession; F - Partial Succession

Docket No. and Date Filed	Rate Schedule Designation	Applicant	Purchaser and Location	FPC Gas Rate Schedule Description and date of document 1/	Number	Supp.
C165-678 A 3-1-66		The Atlantic Richfield Company	El Paso Natural Gas Company (West Waha Field, Reeves County, Texas)	Contract 2-14-66	300	-
C166-110 C 3-13-72 3-24-72		CRA, Inc.	Northern Natural Gas Company (Mertzon Plant, Irion and Tom Greene Counties, Texas)	Letter 11-18-71 Letter 5-15-72	51 51	7 8
C166-110 C 7-14-72 7-24-72		CRA, Inc.	Northern Natural Gas Company (Dove Creek, West Mertzon and Las Perlas Canyon Sand) Fields, Tom Green and Irion Counties, Texas)	Amend. Agree 4-25-72 Letter 7-11-72 Letter 7-13-72	51 51 51	10 1-to 10 2 to 10

1/ Supra.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

A = Initial Service
B = Abandonment
C = Amendment to add acreage
D = Amendment to delete acreage
E = Total Succession
F = Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Description and date of document 1/	Rate	Supp.
CI68-605 A 10-30-67	Southwestern Natural Gas, Inc.	West Lake Natural Gasoline Company and Sinclair Oil & Gas Company (Nena Lucia (Strawn Reef) Field, Nolan County, Texas)	Contract 9-8-67	3	--
CI70-267 A 9-16-69	Exxon Corporation	Transwestern Pipeline Company (Barstow Field, Ward County, Texas)	Contract 5-2-69	469	--
CI70-460 A 11-12-69	Exxon Corporation	Northern Natural Gas Company (Pikes Peak Field, Pecos County, Texas)	Contract 10-14-69	471	--
CI71-530 C 6-16-72	Phillips Petroleum Company	El Paso Natural Gas Company (Goldsmith Plant, Ector County, Texas)	Amendment 5-16-72	483	--

1/ Supra.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

A = Initial Service
B = Abandonment
C = Amendment to add acreage
D = Amendment to delete acreage
E = Total Succession
F = Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Description and date of document 1/	Rate	Supp.
CI71-560 A 2-1-71 C 3-11-71 C 10-19-72	Phillips Petroleum Company	El Paso Natural Gas Company (Sales Ranch Field, Martin and Midland Counties, Texas)	Contract 1-8-71	484	--
			Supp. Agree. 9-26-72	484	1
			Amend. Agree. 9-26-72	484	3
CI71-815 A 3-10-71	Midwest Oil Corporation	Transwestern Pipeline Company (New Mexico State "Y" No.1, Chaves County, New Mexico)	Contract 4-28-71	39	--
CI71-901 A 6-25-71	Mobil Oil Corporation	Northern Natural Gas Company (Gomez (Ellenburger) Field, Pecos County, Texas)	Contract 6-8-71	471	--
CI72-275 A 11-5-71	Phillips Petroleum Company	El Paso Natural Gas Company (Jones Ranch Area, Eddy County, New Mexico)	Contract 10-14-71	492	--
CI72-309 A 11-24-71	Getty Oil Company	El Paso Natural Gas Company (Cotton Draw Field, Eddy County, New Mexico)	Contract 9-1-71	194	--

1/ Supra.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 642

Appendix

Docket No. and Date Filed | Applicant | Purchaser and Location | FPC Gas Rate Schedule: Description and date of document 1/ | Volume | Page

C172-424 A 1-13-72	Hassie Hunt Trust	El Paso Natural Gas Company (N. Puckett (Wolfcamp) Field, Pecos County, Texas)	Contract 1-7-72	40	
C172-502 A 2-11-72	Warren Petroleum Company, a Division of Gulf Oil Corporation	El Paso Natural Gas Company (Eunice Plant, Lea County, New Mexico)	Contract 1-1-72 Contract 10-3-47 Amendment 5-1-59 Amendment 10-26-59	60 60 60 60	-- 1 2 3
C172-519 A 2-22-72 C 8-23-72	Cities Service Oil Company	El Paso Natural Gas Company (Caverns Area, Eddy County, New Mexico)	Contract 1-25-72 Supp. Agree. 8-11-72	382 382	-- 3
C172-587 A 3-17-72	Atlantic Richfield Company (Operator), et al.	Transwestern Pipeline Company (Rock Tank Field, Eddy County, New Mexico)	Contract 3-6-72	654	--
C172-590 A 3/ 3-20-72 C 3/ 2-20-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Goldsmith Plant, Ector County, Texas)	Contract 3-1-72	497	--
C172-591 A 3/ 3-20-72 C 3/ 2-20-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Eunice Plant, Lea County, New Mexico)	Contract 3-1-72	498	--

1/ Supra.

3/ Authorization does not include renewals and extensions of plant supply contracts which have not terminated. Under Opinion No. 639 applicant is not entitled to the new gas ceiling rate for residue gas attributable to raw gas purchased under a new plant supply contract until the old gas supply contract expires.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 622

Appendix

Docket No. and Date Filed | Applicant | Purchaser and Location | FPC Gas Rate Schedule: Description and date of document 1/ | Volume | Page

C172-592 A 3/ 3-20-72 C 3/ 2-20-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Lea Plant, Lea County, New Mexico)	Contract 3-1-72	499	--
C172-593 A 3/ 3-20-72 C 3/ 2-20-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Hobbs Plant, Lea County, New Mexico)	Contract 3-1-72	500	--
C172-594 A 3/ 3-20-72 C 3/ 2-20-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Lusk Plant, Lea County, New Mexico)	Contract 3-1-72	501	--
C172-595 A 3/ 3-20-72 3-30-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Fullerton Plant, Andrews County, Texas)	Contract 3-1-72	502	--
C172-596 A 3/ 3-20-72 C 3/ 2-20-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Crane Plant, Crane County, Texas)	Contract 3-1-72	503	--
C172-597 A 3/ 3-20-72 3-30-73	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Ector Plant, Ector County, Texas)	Contract 3-1-72	504	--

1/ Supra.

2/ Supra.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

E = Initial Service
R = Reinstatement
A = Amendment to add acreage
D = Amendment to delete acreage
X = Total Succession
Y = Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Description and Date of Agreement 1/	Rate	Sup.
C172-598 A 3/ 3-20-72	Phillips Petroleum Company (Operator), et al.	El Paso Natural Gas Company (Wilson Plant, Lea County, New Mexico)	Contract 3-1-72 (Effective Date: Date of Commission Authorization)	505	--
C172-635 A 4-3-72	Cities Service Oil Company	Transwestern Pipeline Company (Rock Tank Field, Eddy County, New Mexico)	Contract 3-23-72	384	--
C172-685 A 3/ 4-21-72 3-33-73	Phillips Petroleum Company (Operator)	El Paso Natural Gas Company (Tunstill Plant, Reeves County, Texas)	Contract 3-1-72	506	--
C172-686 A 3/ 4-21-72 4-3-72 3-2-73	Phillips Petroleum Company (Operator)	El Paso Natural Gas Company (Winkler Plant, Winkler County, Texas)	Contract 3-1-72	507	--
C172-705 A 3-1-72	Atlantic Richfield Company	Northern Natural Gas Company (Shoe Bar Atoka Pool, Lea County, New Mexico)	Contract 3-24-72	656	--
C172-706 A 3-1-72	Sun Oil Company	Transwestern Pipeline Company (Halley Field, Winkler County, Texas)	Contract 4-10-72	509	--
C172-716 (CS71-2) F 3-9-72 7-23-72	Shelly Oil Company (succ. to George F. Chagard, Jr., Trustee)	Natural Gas Pipeline Company of America (Haley Unit, Loving and Winkler Counties, Texas)	Contract 4-12-71 Assignment 9-13-71	257 257	-- 1

1/ Supra.

2/ Supra.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

E = Initial Service
R = Reinstatement
A = Amendment to add acreage
D = Amendment to delete acreage
X = Total Succession
Y = Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Description and Date of Agreement 1/	Rate	Sup.
C172-731 A 5-15-72	Gulf Oil Corporation	El Paso Natural Gas Company (North Puckett (Wolfcamp) Field, Pecos County, Texas)	Contract 1-8-72	435	--
C172-745 A 5-19-72	Hunt Oil Company	Northern Natural Gas Company (Elsinore (Devonian) Field, Pecos County, Texas)	Contract 5-5-72	71	--
C172-755 A 3/ 5-22-72 C 3/ 1-24-73	Warren Petroleum Company, A Division of Gulf Oil Corporation (Operator)	El Paso Natural Gas Company (Tatum Gasoline Plant, Lea County, New Mexico)	Contract 3-1-72 Letter Agree. 5-16-72	61 61	-- 1
C172-756 A 3/ 5-22-72 C 3/ 1-24-73	Warren Petroleum Company, A Division of Gulf Oil Corporation (Operator)	El Paso Natural Gas Company (Caliche Gasoline Plant, Lea County, New Mexico)	Contract 3-1-72	62	--
C172-757 A 3/ 5-22-72 C 3/ 1-24-73	Warren Petroleum Company, A Division of Gulf Oil Corporation (Operator)	El Paso Natural Gas Company (Monument Gasoline Plant, Lea County, New Mexico)	Contract 3-1-72	63	--
C172-758 A 3/ 5-22-72 C 3/ 1-24-73	Warren Petroleum Company, A Division of Gulf Oil Corporation (Operator)	El Paso Natural Gas Company (Saunders Gasoline Plant, Lea County, New Mexico)	Contract 3-1-72 Letter Agree. 5-16-72	64 64	-- 1

1/ Supra.

2/ Supra.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

A = Initial Service
B = Abandonment
C = Amendment to add acreage
D = Amendment to delete acreage
E = Total Succession
F = Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	FPC Gas Rate Schedule: Description and Date of Document 1/	Number	Supp.
CI72-759 A 3/ 3-22-72 C 3/ 1-24-73	Warren Petroleum Company, A Division of Gulf Oil Corporation (Operator)	El Paso Natural Gas Company (Eunice Gasoline Plant, Lea County, New Mexico)	Contract 3-1-72 Letter Agree. 3-16-72	65 65	-- 1
CI72-760 A 3/ 3-22-72 C 3/ 1-24-73	Warren Petroleum Company, A Division of Gulf Oil Corporation (Operator)	El Paso Natural Gas Company (Waddel Gasoline Plant, Crane County, Texas)	Contract 3-1-72 Letter Agree.3-16-72	66 66	-- 1
CI72-762 A 3/ 3-23-72 11-22-72	Skelly Oil Company (Operator)	Northern Natural Gas Company (Eunice Plants, Lea County, New Mexico)	Contract 3-15-72 Letter Agree. 3-15-72	262 262	-- 1
CI72-764 A 3-24-72	Gulf Oil Corporation	Transwestern Pipeline Company (Rock Tank Morrow Field Eddy County, New Mexico)	Contract 4-25-72	436	--
CI72-771 A 3/ 3-25-72 11-22-72	Skelly Oil Company (Operator)	El Paso Natural Gas Company (Eunice Plats, Lea County, New Mexico)	Contract 3-1-72	263	--
CI72-841 A 6-19-72	Exxon Corporation	El Paso Natural Gas Company (West Fort Chadbourne Field, Runnels County, Texas)	Contract 6-2-72	309	--
CI72-834 A 6-23-72	Skelly Oil Company (Operator), et al.	El Paso Natural Gas Company (East Vealmoor Plant, Howard County, Texas)	Contract 6-20-72	260	--

1/ Supra.

1/ Supra.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

A = Initial Service
B = Abandonment
C = Amendment to add acreage
D = Amendment to delete acreage
E = Total Succession
F = Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	FPC Gas Rate Schedule: Description and Date of Document 1/	Number	Supp.
CI73-14 A 7-7-72 3-7-73	Continental Oil Company	Transwestern Pipeline Company (Maljamar Area, Lea County, New Mexico)	Contract 3-1-72	379	--
CI73-22 A 7-10-72	Pennzoil Company	Transwestern Pipeline Company (Acreage in Eddy County, New Mexico)	Contract 6-19-72	35	--
CI73-23 A 7-12-72	Pennzoil Company	Transwestern Pipeline Company (Acreage in Eddy County, New Mexico)	Contract 7-6-72	36	--
CI73-26 A 7-12-72	Belco Petroleum Corporation, et al.	Natural Gas Pipeline Company of America (Jones Ranch Area, Eddy County, New Mexico)	Contract 6-2-72	17	--
CI73-85 (CS72-852) F 8-7-72	Suburban Propane Gas Corporation (succ. to Delta Drilling Company, et al.)	Northern Natural Gas Company (Davidson Ranch Area, Crockett County, Texas)	Contract 10-27-65 Amendment 5-19-66 Amendment 5-30-66 Amendment 11-30-70 Agreement 6-22-72 Assignment 7-14-72	21 21 21 21 21 21	-- 1 2 3 4 5
CI73-85 D 6-25-73 4/	Suburban Propane Gas Corporation	Northern Natural Gas Company (Davidson Ranch Area, Crockett County, Texas)	Release Agree. 4-6-73 (Effective Date: Date of Commission Authorization)	21	6
CI73-99 A 8-10-72	Phillips Petroleum Company	El Paso Natural Gas Company (Drag A and Drag B Leases, Eddy County, New Mexico)	Contract 7-25-72	309	--

1/ Supra.

4/ No certificate deletion filing required; acreage being deleted is being added to another contract with the same buyer in Docket No. CI73-127.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

EXPLANATION
A - Initial Service
B - Abandonment
C - Amendment to add acreage
D - Amendment to delete acreage
E - Total Succession
F - Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Rate Schedule Designation and Date of Instrument	Effective Date	Number	Supp.
CI73-113 A 8-17-72	Hunt Oil Company	El Paso Natural Gas Company (Acreage in Eddy County, New Mexico)	Contract	8-7-72	72	--
CI73-127 A 8-24-72	Suburban Propane Gas Corporation	Northern Natural Gas Company (Davidson Ranch Field, Crockett County, Texas)	Contract Assignment	6-30-72 7-14-72	22 22	-- 1
CI73-127 C 6-23-73 1/	Suburban Propane Gas Corporation	Northern Natural Gas Company (Davidson Ranch Field, Crockett County, Texas)	Amend. Agree. (Effective Date: Date of Initial Delivery)	4-6-73	22	3
CI73-165 A 9-5-72	Suburban Propane Gas Corporation	Northern Natural Gas Company (Ozoha Plant, Clearfork Field, Crockett County, Texas)	Contract	7-11-72	23	--
CI73-189 A 9-13-72	Skelly Oil Company	El Paso Natural Gas Company (Cedar Canyon Unit, Eddy County, New Mexico)	Contract	8-25-72	265	--
CI73-227 (CI1805) F 9-25-72	McCulloch Oil Corporation (succ. to Atlantic Richfield Company)	El Paso Natural Gas Company (Fowler Field, Lea County, New Mexico)	Contract Amend. Agree. Letter Agree. Amend. Agree. Assignment	7-19-39 4-2-42 12-6-49 12-18-61 4-8-72	23 23 23 23 23	-- 1 2 3 4
CI73-232 A 10-4-72	Gulf Oil Corporation	Northern Natural Gas Company (Flying "W" (Ellenburger) Field, Winkler County, Texas)	Contract	8-22-72	438	--
CI73-282 A 10-16-72	Phillips Petroleum Company	El Paso Natural Gas Company (NW James Ranch Prospect Field, Eddy County, New Mexico)	Contract	9-26-72	313	--

1/ Supra.

2/ Subject acreage is being deleted from Docket No. CI73-85.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662

Appendix

EXPLANATION
A - Initial Service
B - Abandonment
C - Amendment to add acreage
D - Amendment to delete acreage
E - Total Succession
F - Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Rate Schedule Designation and Date of Instrument	Effective Date	Number	Supp.
CI73-292 (CI71-644) F 10-24-72	McCulloch Oil Corporation of Texas (succ. to Ladd Petroleum Corporation)	Northern Natural Gas Company (Fort Stockton-Dixel Unit, Pecos County, Texas)	Contract Amend. Agree. Assignment	12-1-70 5-1-72 9-6-72	4 4 4	-- 1 2
CI73-471 A 1-12-73	Mobil Oil Corporation	El Paso Natural Gas Company (Morrison (3600' Wolfcamp) (Ellenburger) Field, Crockett and Val Verde Counties, Texas)	Contract Letter Agree.	12-28-72 12-28-72	490 490	-- 1
CI73-673 A 4-5-73	Atlantic Richfield Company	El Paso Natural Gas Company (NMSU, Mattix No. 1, Lea County, New Mexico)	Contract	2-21-73	668	--
CI73-689 A 4-9-73	Continental Oil Company	El Paso Natural Gas Company (Fowler Upper Yeso Field, Lea County, New Mexico)	Contract	2-21-73	400	--
CI73-693 A 4-16-73 2/	Gulf Oil Corporation	Transwestern Pipeline Company (Worsham Bayer Ellenburger Field, Reeves County, Texas)	Contract (Effective Date: Date of Initial Delivery)	2-1-73	451	--
CI73-727 A 4-30-73	Amoco Production Company	El Paso Natural Gas Company (Levelland (San Andres) Field, Cochran County, Texas)	Contract	12-7-72	617	--
CI73-750 A 5-3-73	Chevron Oil Company, Western Division	El Paso Natural Gas Company (Fowler Upper Yeso Field, Lea County, New Mexico)	Contract	2-21-73	45	--

1/ Supra.

2/ Subject acreage is being deleted from Docket No. CI64-708.

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DOCKETS IN WHICH CERTIFICATES WERE ISSUED PURSUANT TO OPINION NO. 662
Appendix

A - Initial Service
B - Abandonment
C - Amendment to add acreage
D - Amendment to delete acreage
E - Total Succession
F - Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Description and Date of Instrument 1/	Rate Sch. No.	Supp. No.
CI73-770 (C162-825) F 5-3-73	Gulf Oil Corporation (Succ. to Mobil Oil Corporation)	El Paso Natural Gas Company (Rojo Caballos South (Ellenburger) Field, Pecos County, Texas)	Contract 12-28-60	444	--
			Letter Agree. 12-6-62	444	1
			Letter Agree. 12-26-62	444	2
			Amend. Agree. 6-14-65	444	3
			Amend. Agree. 12-22-65	444	4
			Amend. Agree. 9-21-71	444	5
			Amend. Agree. 4-19-73	444	6
			Letter Agree. 4-25-73	444	7
			Assignment 5-22-73	444	8
CI73-835 (CS73-81) F 5-29-73	Suburban Propane Gas Corporation (succ. to Pauley Petroleum, Inc.)	Northern Natural Gas Company (Sonora (Canyon Sand) Field, Sutton County, Texas)	Contract 12-30-63	27	--
			Amend. Agree. 2-23-65	27	1
			Supp. Agree. 5-11-67	27	2
			Amend. Agree. 5-25-67	27	3
			Amend. Agree. 11-6-69	27	4
			Assignment 5-9-73	27	5
CI73-859 A 6-6-73	Atlantic Richfield Company	Northern Natural Gas Company (Drinkard Field, Lea County, New Mexico)	Contract 3-30-73	670	--
CI74-25 A 7-13-73	Suburban Propane Gas Corporation	Northern Natural Gas Company (Mayer Ranch Area, Sutton County, Texas)	Contract 1-3-72	28	--
			Supp. Agree. 11-22-72	28	1
			Letter Agree. 12-11-72	28	2
			Supp. Agree. 3-6-73	28	3

1/ Supra.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Petition of El Paso Natural Gas Company for Issuance of a Declaratory Order

EL PASO NATURAL GAS COMPANY ("El Paso"), pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, hereby petitions for the prompt issuance of a declaratory order resolving the following questions:

(i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-type basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act ("Act") and Section 154.91 of the Commission's Regulations Under the Natural Gas Act in order to cease such sales to El Paso and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease?

(ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?

(iii) Given the facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

[2] In support hereof, El Paso respectfully states:

I.

The names, titles, and mailing addresses of those persons to whom correspondence and communications concerning this matter are to be addressed are as follows:

Mr. Walter G. Henderson
Assistant Vice President
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas 79978

Mr. Robert N. Harbor
El Paso Natural Gas Company
310 Suffridge Building
1775 K Street, N. W.
Washington, D. C. 20426

The exact legal name of El Paso is El Paso Natural Gas Company. It is a corporation duly organized and

existing under the laws of the State of Delaware, having its principal place of business located in El Paso, Texas. El Paso is a wholly-owned subsidiary of The El Paso Company, which is also a corporation duly organized and existing under the laws of the State of Delaware having its principal place of business located in Houston, Texas. El Paso is authorized to conduct business as a foreign corporation in the States of Alaska, Arizona, Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregan, Texas, Utah, Washington, and Wyoming.

II.

El Paso is a "natural-gas company" engaged in the business of producing, purchasing, transporting, and selling natural gas to distribution companies and other pipeline companies for resale and to industries and others for direct consumption. El Paso's interstate pipeline system extends from the Permian Basin area of west Texas and southeast New Mexico, the Texas-Oklahoma Panhandle area, the San Juan Basin of northwest New Mexico and southwest Colorado, and the Four Corners area of the States of Arizona, New Mexico, Utah, and Colorado, through one or more of the States of Texas, New Mexico, Utah, Colorado, and Arizona, to points of termination at the boundary between the States of California and Arizona near Blythe, California, and Topock, Arizona, and to a point of termination at the boundary between the States of Arizona and Nevada near Big Bend, Arizona. El Paso also owns and operates an intrastate pipeline system, situated in the State of Texas, which serves consumers

in the El Paso, Texas, area and fuel requirements at certain of El Paso's plants and stations on its interstate system. The gas which is the subject hereof goes into El Paso's interstate system.

[3] III.

On July 14, 1925, Gulf Production Company, the corporate predecessor of Gulf Oil Corporation, as lessee, executed a 50-year fixed term oil and gas lease with W. N. Waddell, *et al.*, lessors.[1] Said oil and gas lease and amendment thereto dated March 16, 1926, are hereinafter referred to as the "50-year fixed term lease".

According to El Paso's information and belief, the current lessees under the 50-year fixed term lease are: (1) Gulf Oil Corporation, a corporation duly incorporated under the laws of the State of Pennsylvania and authorized to transact business within the State of Texas, (2) B.W.P., Inc., a corporation duly incorporated under the laws of the State of Texas, (3) Highland Production Company, Inc., a corporation duly incorporated under the laws of the State of Texas, (4) W. Nelson Rees, an individual who resides in Odessa, Ector County, Texas, (5) G. Dillard Anderson, Jr., an individual who resides in Midland, Midland County, Texas, (6) V. L. De Bolt, an individual who

[1] A true conformed copy of this oil and gas lease, recorded in Volume 10, pp. 397-400 of the Deeds Records of Crane County, Texas, is attached hereto as Exhibit "A" and made a part hereof. An amendment to this oil and gas lease dated March 16, 1926, recorded in Volume 12, pp. 205-206, of the Deed records of Crane County, Texas, was executed by the same parties, covering certain lands in Crane County, Texas, as described therein. A true copy of this amendment is attached hereto as Exhibit "B" and made a part hereof.

resides in Odessa, Ector County, Texas, and (7) John L. Harlan, Trustee, an individual who resides in either El Paso, El Paso County, or Monahans, Ward County, Texas. Gulf Oil Corporation and its predecessor, Gulf Production Company, are hereinafter referred to as "Gulf". All said lessees including Gulf are hereinafter referred to as "Gulf, *et al.*" Also according to El Paso's information and belief, the reversionary interest rights to the oil, gas, and other minerals produced from the acreage covered by the 50-year fixed term lease are now owned, held, or claimed by Exxon Company, U.S.A., a division of Exxon Corporation, by Southland Royalty Company, and by numerous individuals and corporations, as listed in Exhibit "C" and made a part hereof. Exxon Corporation and its division Exxon Company, U.S.A. are hereinafter referred to as "Exxon". Southland Royalty Company is hereinafter referred to as "Southland". All said owners as listed in Exhibit "C" including Exxon and Southland are hereinafter referred to as "Exxon, *et al.*"

By the terms of the 50-year fixed term lease, Gulf obtained the exclusive right of exploiting 45,771 acres of land in Crane County, Texas, and producing oil and gas therefrom. Upon execution of the lease, Gulf commenced drilling operations on the land and has continuously conducted operations thereupon to the present date. At the present [4] time Gulf is operating approximately 925 producing oil and gas wells on the land.

By the terms of the 50-year fixed term lease, the leasehold estate expires fifty years after date of execution, which is July 14, 1975. Gulf, *et al.* sought to extend the termination date of the 50-year fixed term

lease by either 4,661 or 4,286 days on the grounds that they are entitled to such additional days of production because of delays and interruptions arising out of their compliance with regulatory orders of the Texas Railroad Commission. The Supreme Court of Texas resolved the issue in *Gulf Oil Corporation* v. *Southland Royalty,* 496 S.W. 2d 547 (1973),[2] by holding that the expiration date of the lease was not extended and the leasehold interest of Gulf, *et al.* shall therefore expire on July 14, 1975. The mineral rights, including the rights to natural gas production, by Texas law shall therefore revert to the reversionary mineral interest owners, Exxon, *et al.,* on July 14, 1974.

IV.

On January 26, 1954, El Paso, as buyer, and Gulf, as seller, executed a residue gas purchase agreement by which El Paso agreed to buy surplus residue gas from Gulf's natural gasoline extraction plant in Crane County, Texas, called the Waddell Gasoline Plant.[3] On March 1, 1972, El Paso and Warren entered into an additional residue gas purchase agreement assuring El Paso of a continuing supply of quantities of residue

[2] A true copy of the decision of the Supreme Court of Texas in Gulf Oil Corporation v. Southland Royalty, 496 S.W. 2d 547 (1973), is attached hereto as Exhibit "D" and made a part hereof.

[3] The Waddell Gasoline Plant is located in Section 25, Block B-26 Public School Lands, Crane County, Texas.

On November 1, 1957, Gulf conveyed all of its interest in the Waddell Gasoline Plant to Gulf's wholly-owned subsidiary, Warren Petroleum Corporation ("Warren"). On November 1, 1957, Gulf also assigned to Warren the residue gas purchase agreement dated January 26, 1951. On December 31, 1971, Warren was merged into Gulf and now operates as a division of Gulf.

gas from the Waddell Gasoline Plant. These residue gas purchase agreements, and subsequent amendments thereto, constitute Warren's FPC Gas Rate Schedule Nos. 43 and 46, respectively.[4] El Paso takes delivery [5] of such surplus residue gas into its pipeline system at the outset at the Waddell Gasoline Plant and transports it through its jurisdictional facilities for subsequent resale in interstate commerce.[5] El Paso purchases, transports, and resells approximately 60 MMcf of such surplus residue gas daily.[6]

Of the surplus residue gas purchased by El Paso at the outlet of the Waddell Plant, Warren has informed El Paso that approximately 25 MMcf daily is attributable to production from wells on land leased by Gulf, *et al.* pursuant to the 50-year fixed term lease. Gulf, *et al.* make percentage-type sales to Warren of casinghead gas produced from the acreage covered by the 50-year fixed term lease. As explained above, the mineral rights, including rights to casinghead gas, presently

[4] The Commission granted certificates of public convenience and necessity authorizing the sale of residue gas to El Paso from the Waddell Gasoline Plant pursuant to Warren's Rate Schedule Nos. 43 and 66 at Docket No. G-13445, 19 F.P.C. 1151 (1958) and Docket No. CI72-760 (issued July 22, 1974).

[5] At the following docket numbers, the Commission granted El Paso certificates of public convenience and necessity for the construction and operation of pipeline and compression facilities needed to transmit gas from the Waddell Gasoline Plant: G-1629, 10 F.P.C. 644 (1951); G-2371, 13 F.P.C. 1008 (1954); G-10499, 16 F.P.C. 1354 (1956); and G-12580, 19 F.P.C. 393 (1958).

[6] By the residue gas purchase agreement dated January 26, 1951, El Paso was entitled to purchase up to 7 MMcf of surplus residue gas each day. By subsequent amendments, El Paso presently has the right to purchase up to 80 MMcf of surplus residue gas each day.

leased to Gulf pursuant to the 50-year fixed term lease revert to the reversionary interest owners, Exxon, *et al.* on July 14, 1975.

El Paso has become aware that certain of the reversionary interest owners comprising a portion of Exxon, *et al.* are soliciting proposals for the purchase of their shares of natural gas produced after July 14, 1975, from the various lands and leases presently leased to Gulf, *et al.* pursuant to the 50-year fixed term lease. El Paso did not receive such solicitations itself but it has obtained a copy of Exxon's solicitation to Odessa Natural Corporation ("Odessa"),[7] dated October 1, 1974,[8] and a copy of Southland's solicitation to Odessa dated November 18, 1974,[9] wherein Southland advises Odessa that Southland, Warren Wright, and Penn (comprising a portion of Exxon, *et al.*) collectively own 80 percent of the 50-year fixed term lease gas and are considering its sale.

[6] By letter dated October 10, 1974, El Paso informed Exxon that El Paso is aware of Exxon's solicitation proposal and shall consider what position El Paso deems necessary to preserve its interest in said gas.[10] Concurrently, El Paso sent to Southland a copy of El Paso's said letter to Exxon and informed South-

[7] Odessa is an intrastate pipeline affiliate of El Paso.

[8] A true copy of this solicitation letter is attached hereto as Exhibit "E" and made a part hereof.

[9] A true copy of this solicitation letter is attached hereto as Exhibit "F" and made a part hereof.

[10] A true copy of this letter is attached herto as Exhibit "G" and made a part hereof.

land that the contents of said letter apply equally to Southland's share of gas.[11]

V.

It can be surmised from both Exxon's and Southland's solicitation offers to Odessa, an intrastate buyer and carrier of natural gas, and Exxon's and Southland's failure to make such offers to El Paso, an interstate pipeline, and from the commonly known large differential in prices between intrastate and interstate purchases of natural gas in west Texas[12] that both Exxon and Southland intend to sell only to an intrastate buyer of gas,[13] thereby diverting said gas from its present movement in interstate commerce to movement in intrastate commerce.

Because the surplus residue gas in question is presently flowing in interstate commerce through El Paso's interstate pipeline system for resale, and is therefore

[11] A true copy of this letter is attached hereto as Exhibit "H" and made a part hereof.

[12] Natural gas intended for transportation and resale in interstate commerce cannot be sold at a rate higher than the national area rate of 51¢ per Mcf plus Btu adjustment and taxes, which is the rate which became effective under Opinion Nos. 699 and 699-H on and after January 1, 1975, for certain classes of "new" gas sales. Gas intended for transportation and resale in intrastate commerce, however, is currently selling in the vicinity of Crane County, Texas, at a rate of $1.30 per Mcf.

[13] Besides Odessa, Lo Vaca Gathering Company and Lone Star Gas Company are intrastate gas transmission companies which own and operate pipelines in the immediate vicinity of the Waddell Gasoline Plant. In addition, Pioneer Natural Gas Company and Texas Utility Fuel Company purchase gas in Crane County, Texas, for use solely within the State of Texas.

subject to the jurisdiction of the Commission, El Paso questions whether Exxon, *et al.* are free to divert such gas to intrastate commerce without prior clarification of the questions raised herein; namely: First, must Gulf, *et al.* obtain abandonment authorization pursuant to Section 7(b) of the Act and Section 154.91(e) of the Regulations in order to effectuate the transfer by reversion to Exxon, *et al.* of the mineral rights under the 50-year fixed [7] term lease? Second, must Exxon, *et al.* obtain prior Commission authorization, particularly abandonment authorization pursuant to Section 7(b), before they may divert sales of surplus residue gas from interstate commerce to intrastate commerce?[14] Finally, must Warren obtain prior Commission authorization before Warren may divert sales of residue gas attributable to casinghead gas produced under the 50-year fixed term lease from El Paso when El Paso transports and resells said gas in interstate commerce.

[14] In Perry R. Bass, 48 F.P.C. 1269 (1972), a producer (Bass) pursuant to terms of a farmout agreement with Shell Oil Company ("Shell") exercised his option to convert his overriding roylaty interest into a 50 percent working interest. Although Shell had been selling all of the natural gas produced from a well to El Paso for resale in interstate commerce, the producer after converting his overriding royalty interest into a working interest sought to sell his 50 percent share of the production to Natural Gas Pipe Line Company ("Natural") also for resale in interstate commerce. El Paso petitioned to the Commission for a declaratory order on the issue of whether Bass without abandonment authorization pursuant to Section 7(b) could divert his 50 percent share of the gas from interstate transmission and resale in interstate commerce by El Paso. By its order issued December 8, 1972, the Commission decided that Bass' prior royalty interest did not make him a seller of natural gas in interstate commerce for resale nor did his conversion from a royalty interest to a working interest; therefore, the producer was free to sell his share of the gas to Natural.

The Commission in Perry R. Bass did not address itself to the issues raised here. In particular, the Commision did not address itself to whether a party in the position of Gulf (i.e., a prior working interest owner) must obtain abandonment authorization before the lessor may "back in" to the working interest. Moreover, the factual situation is so different in this case, when the entire output

It is well established that once natural gas is dedicated to interstate commerce it cannot be removed from interstate commerce without abandonment authorization pursuant to Section 7(b) of the Act.[15] and it is also well established that natural gas is dedicated to interstate commerce, not by contractual arrangements pertaining to it, but by the physical movement of the gas.[16] In the instant case, natural gas, [8] the production of which will revert to Exxon, *et al.* on July 14, 1974, is presently moving in interstate commerce through El Paso's interstate pipeline system. Therefore, such gas should not be removed from interstate commerce without prior Commission clarification of the above issues.

VI.

Wherefore, for the foregoing reasons, El Paso Natural Gas Company hereby respectfully petitions for issuance of declaratory order resolving the following questions:

(i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights

of the wells is proposed to be diverted to intrastate commerce, that the Perry R. Bass decision should not be controlling on any issue raised herein by El Paso.

[15] Sunray Mid-Continent Oil Co. v. FPC, 364 U.S. 137 (1960).

[16] California v. Lo Vaca Gathering Co., 397 U.S. 366 (1965).

thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-type basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations Under the Natural Gas Act in order to cease such sales to El Paso and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease?

(ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?

(iii) Given the facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

/s/ By WALTER G. HENDERSON
Walter G. Henderson
Assistant Vice President

[9]

G. Scott Cuming
Senior Vice President and General Counsel
Harris S. Wood
Arthur R. Formanek, Jr.
El Paso Natural Gas Company
P. O. Box 1492
El Paso, Texas 79978

C. Frank Reifsnyder
Hogan & Hartson
815 Connecticut Avenue
Washington, D. C. 20006

Counsel for

EL PASO NATURAL GAS COMPANY

Dated: January 17, 1975

[10]

(VERIFICATION OMITTED IN PRINTING)

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[11]

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[12]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(January , 1975)

Notice of Petition for a Declaratory Order

Take notice that on January , 1975, El Paso Natural Gas Company ("El Paso"), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Texas, 79978, filed at Docket No. CP75— pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure a petition for issuance of a declaratory order resolving certain questions and removing certain uncertainties in connection with the expiration of a 50-year fixed term lease currently held by Gulf Oil Corporation which will expire on July 14, 1975.

The petition states that on July 14, 1925, Gulf Production Company, the corporate predecessor of Gulf Oil Corporation ("Gulf"), as lessee, executed a 50-year fixed term oil and gas lease with W. N. Waddell, *et al.*, lessors. By the terms of said 50-year fixed term lease, Gulf obtained the exclusive right of exploiting 45,771 acres of land in Crane County, Texas, and producing oil and gas therefrom, and has con-

tinuously conducted operations thereupon to the present date. By the terms of said 50-year fixed term lease, the leasehold estate expires fifty years after date of execution, which is July 14, 1975, whereupon the mineral rights, including the rights to natural gas production, shall revert to the reversionary mineral interest owners.

The petition further states that Gulf and other leasehold interest owners of said 50-year fixed term lease make percentage-type sales to Warren Petroleum Corporation ("Warren"), a division of Gulf, of certain quantities of casinghead gas produced from the acreage covered by the said 50-year fixed term lease. On January 26, 1951, El Paso, as buyer, and Gulf, as seller, executed a residue gas purchase agreement by which El Paso agreed to buy surplus residue gas from Gulf's natural gasoline extraction plant in Crane County, Texas, called the Waddell Gasoline Plant. On March 1, 1972, El Paso and Warren entered into an additional residue gas purchase agreement concerning certain quantities of residue gas from the Waddell Gasoline Plant. Pursuant to these gas purchase contracts, El Paso takes delivery of approximately 60 MMcf daily of surplus residue gas into its pipeline system at the outlet at the Waddell Gasoline Plant and transports it through its jurisdictional facilities for subsequent resale in interstate commerce. Warren has informed El Paso that approximately 25 MMcf daily of such surplus residue gas is attributable to production from wells on land leased by Gulf and other leasehold interest owners to El Paso pursuant to the said 50-year fixed term lease.

[13] The petition further states that El Paso has become aware that Exxon Corporation and Southland Royalty Company, comprising a portion of the reversionary interest owners are soliciting proposals from intrastate gas transmission companies for the purchase of their shares of natural gas produced after July 14, 1975, from the acreage covered by said 50-year fixed term lease. Southland Royalty Company also is soliciting on behalf of Warren Wright and Penn and, collectively, Southland Royalty Company, Warren Wright and Penn own 80 percent of the 50-year fixed term lease gas.

Therefore, El Paso is petitioning the Commission for a declaratory order resolving the following questions: (i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-type basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations Under the Natural Gas Act in order to cease such sales to El Paso and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease? (ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty

Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce? (iii) Given the facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

Any person desiring to be heard or to make any protest with reference to said application should, on or before ————, 1975, file with the Federal Power Commission, Washington, D. C., 20426, a petition to intervene, an answer, or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR Sections 1.8-1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

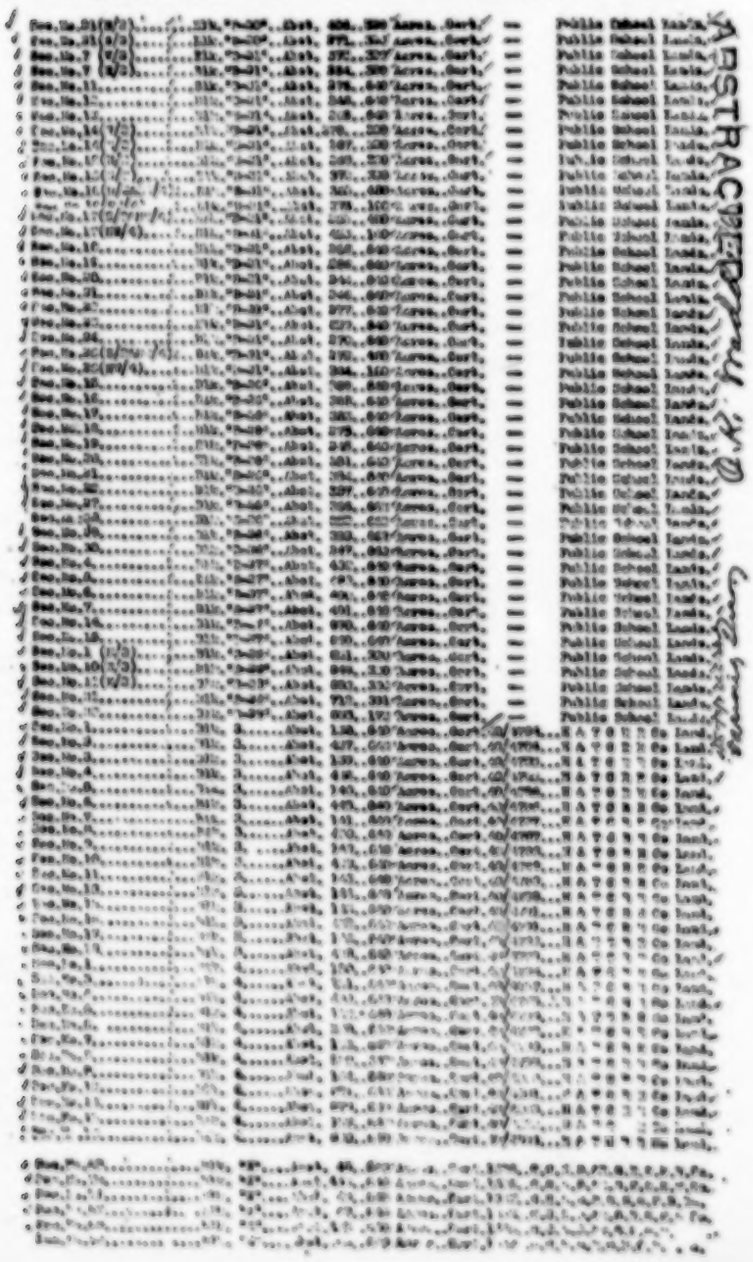
Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Section 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this petition if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that issuance of the de-

claratory order is required by the public convenience and necessity. If a petition for leave [14] to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

KENNETH F. PLUMB
Secretary

Docket No. CP75-____
Exhibit "A"
Page 1 of 6

OIL AND GAS LEASE



BEST COPY AVAILABLE

It is agreed that for the purpose of calculating rentals, both before and after partial surrender, as hereinafter provided, the leased tract contains Forty-Five Thousand, Seven Hundred 7. (45,77[illegible]) acres; nevertheless, all of the above described lands is embraced in this lease, be it more or less.

Par. 2. TO HAVE AND TO HOLD unto said Lessee and to Lessee's successors and assigns for the term of Twelve (12) years from the date hereof and as much longer thereafter as oil or gas (or other minerals, if produced hereunder) are produced from said land. Provided, that this lease shall not remain in force longer than fifty (50) years from this date, and provided further, that a temporary cessation of production due to cleaning out, washing over or drilling deeper of any well, or similar causes complied after production secured, shall not terminate this lease. And Lessor covenants that Lessor has good title to said land and will protect Lessee in the quiet and peaceable possession thereof.

Par. 3. Lessee agrees to begin operations for the drilling of a well on the premises within twelve (12) months from the date hereof, or, failing so to do, Lessee agrees to pay in the manner below stated for each six (6) months' period for which such drilling is delayed, not to exceed eighteen (18) such periods, the sum of ---$5,721.37--- Dollars, such payment to be made on or before the beginning of each such period and shall be made by paying the same to the Lessor in person or to the ---- First National ---- Bank of Ft. Worth, ---------- , Texas, or Lessee may mail Lessee's check to Lessor in said sum in care of said Bank, payable to Lessor, said Bank being hereby constituted Lessor's agent to receive said funds for Lessor or to receive and deliver said check to said Lessor, as the case may be; in either of the three methods of making such payment Lessee may use Lessee's check and the mailing of said check shall be deemed making payment; if Lessee shall fail to make such payment in advance as above provided, and such failure or default shall continue for thirty (30) days after the due date of such payment, Lessor shall have the right to forfeit this lease.

Par. 4. In the case of change of ownership of the land hereby leased, or some part thereof, whether by descent and partition, devise, conveyance or otherwise, the above designated Bank shall become the Trustee for all the owners to receive and distribute the rentals coming them, and the payment of the rentals to such Bank shall prevent forfeiture of the lease. In all cases where the original depositary Bank shall refuse to receive payment of rentals, or should go out of business, or consolidate with another Bank, the Lessor, or successors in interest, shall have the right to designate in writing some Bank as Trustee, and until such designation is made and Lessee notified in writing such rentals shall not be due; and no forfeiture of this lease can be declared if such rental is paid within thirty (30) days after receipt of such notice by Lessee.

Par. 5. If while this lease is in force as herein provided, Lessee shall have begun operations in attempt to find oil or gas, then, without making any further payments Lessee may continue such attempt, and may make as many attempts as Lessee pleases; but if Lessee shall abandon such attempts for ninety (90) days without finding oil or gas in paying quantities, Lessee shall resume payment of the rentals falling due after the completion or abandonment of such well, at the next ensuing rental period beginning after such completion or abandonment; provided Lessee shall have at least ninety (90) days from the date of such abandonment of operations in which to make such payment and on resuming payment of rentals Lessee shall have the right to continue making the same or of beginning operations for the drilling of a well and to alternate such rights.

Par. 6. If operations shall not be begun on or before the expiration of ten (10) years from this date, this lease shall wholly terminate, but if, prior to the termination of such ten years, Lessee shall have begun operations in attempt to find oil or gas and is engaged in such operations at the end of the ten-year period, then Lessee shall have the right to continue such operations and also to make as many additional attempts to find oil or gas as Lessee desires beyond the expiration of said ten-years period; provided, however, that these attempts or extending such rights beyond such ten years must be successful in the sense that, until oil or gas be found in paying quantities, not more than sixty (60) days shall elapse between the abandonment of such an one well and the beginning of operations on another, and provided further that the right to make attempts before the discovery of oil or gas shall not continue in any event longer than twelve (12) years from the date hereof.

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SECTION 2.

Paragraph 1. If oil shall be found on said premises Lessee shall deliver as royalty to Lessor, free of expense, one-eighth (1/8) part of the oil saved from that produced, after deducting such part as may be used for drilling and operating on the Land and treating the oil or gas so as to make it merchantable; such delivery to be made either into tanks supplied by Lessee with connections by Lessee provided, or into any pipe line that may be connected with the well; or Lessee may, at Lessee's option, buy such royalty oil, paying the current market price in the field at the time of production. (If Lessee shall operate so as to save and utilize casinghead gas from said premises, then Lessee shall pay as royalty to Lessor one-eighth (1/8) part of the value of such gas, calculated at the rate of four (4) cents per one thousand (1,000) cubic feet of the casinghead gas, calculated as to quantity to be made on the basis of four (4) ounces pressure above atmospheric pressure at the temperature of sixty (60) degrees Fahrenheit, as royalty on such casinghead gas, and such royalty payment to each six months' period, beginning from the date hereof, to be paid within thirty (30) days after expiration of each period. If any well on said premises shall produce natural gas in paying quantities, and such natural gas is used off the premises or marketed by Lessee, then Lessor shall be paid at the rate of Two Hundred ($200.00) Dollars per annum for each and every such well, such payment to be made on or before the end of each such year in which such well is brought in.)

Par. 2. If, as result of any explorations under this contract any other minerals than oil or gas shall be found in quantities deemed by the Lessee to be paying, then Lessee shall have the optional right to mine for and produce the same, paying to the Lessor what, under all the circumstances, may be a reasonable royalty.

Par. 3. All money royalties may be paid to Lessor as provided in Paragraph 3 of Section 1 hereof. Should the interest owned by Lessor in said land prove to be less than the whole, the royalties and rentals to be paid hereunder shall be paid to the Lessor in proportion only that Lessor's interest is to the entire interest or whole.

SECTION 3.

Paragraph 1. It is agreed that, without the valid written consent of both parties hereto, no well shall be drilled, no shaft sunk, and no mining operations of any kind shall be carried on, within two hundred (200) feet of any dwelling houses now on said premises, and that the use of the surface of the land is hereby granted only so far as may be necessary or proper and convenient for the exercise of the rights herein granted.

SECTION 4.

Paragraph 1. The obligation of Lessee with respect to drilling offset wells shall be to drill such offset wells as a prudent, responsible operator would drill under the same conditions if he owned the land hereby leased, subject to the following provisions, to-wit: When an offset well is demandable under the above provisions, the Lessee shall have the option of either drilling such offset well or of paying a royalty with respect thereto calculated as follows--take the well, as to which an offset is demanded, as a center; transcribe a circle around it with a radius of three hundred feet; ascertain what proportion of the area of such circle falls within this lease; such proportion shall be the proportion of royalty which shall be paid on the production of the well as to which an offset is demandable; thus, if that portion of the area of the circle included in this lease is one-fourth of the total area, then one-fourth of the royalty which would be payable on the well to be offset if the same was on this lease shall be paid; Provided, that no well need be offset when there is a well practically or nearly between it and the line of this lease and such intier well has been offset, or royalty paid with respect thereto; Provided, further, if the Lessee so elects, an offset well may be drilled at any time, even after royalties have been paid, and, from the beginning of such well, no royalty shall be paid with respect to the well to be offset. Such royalty shall be a money totality determined by the market value of the oil when produced. This provision shall also apply to gas wells provided the gas is marketable at the time and place.

SECTION 5.

Paragraph 1. Lessee further agrees to pay the actual cash value, at the time of destruction, of any growing crops destroyed on said leased premises by operations hereunder, or the reasonable damage to any such crops caused by such operations.

SECTION 6.

Paragraph 1. Lessee may pay off any lien or taxes now or hereafter due on or against said land; and if Lessee does so, Lessee shall be subrogated to all the rights of the holder of such lien or tax debt, and shall have a lien on all rentals and royalties accruing hereunder for reimbursement.

SECTION 7.

Paragraph 1. When drilling or other operations are delayed or interrupted by storm, flood, or other act of God, by fire, war, rebellion, scarcity of water, insurrection, riots, strikes, scarcity of labor, difficulties with employees, or failure of carriers to transport or furnish facilities for transportation, or as the result of some order, requisition or necessity of the Government, or as the result of any cause whatsoever beyond the control of the Lessee, the time of such delay or interruption shall not be counted against the Lessee--anything in this lease to the contrary notwithstanding.

SECTION 8.

Paragraph 1. Lessee is hereby given the right to surrender this lease at any time as to all or any part of the land hereby leased upon paying to the Lessor ---------- ---- cents per acre for each acre surrendered in addition to any sums that may be then due and accrued under the terms hereof, in the manner provided in Paragraph 3 of Section 1 hereof, and upon making such surrender the Lessee shall thereupon be released from all further payments, liabilities, or obligations as respects the land surrendered, and the rentals provided for in Paragraph 3 of Section 1 hereof shall be reduced by the proportion of acreage surrendered to the whole.

SECTION 9.

Paragraph 1. It is further agreed that all the conditions and terms herein shall extend to the heirs, executors, legal representatives, successors in interest and assigns of the parties hereto; but no change of ownership of the land, or part thereof, shall impose any additional obligation or burden on the Lessee, and to that end Lessor hereby covenants for herself, her heirs, assigns and successors in interest, that in case of any change of ownership of said land, or part thereof, whether by conveyance, devise, inheritance, partition, or otherwise, all rentals and royalties accruing hereunder shall be paid to the new owners as long as the Lessee has not been furnished with a recorded transfer of said land or part thereof, and no change in the ownership of the land or the right to receive royalties or rentals shall be binding upon the Lessee until the Lessee has been furnished with a certified copy of the recorded instrument, but such payments may be made to such part of such royalty or rentals as may be due to the whole acreage contained in this lease, the payment shall be taken and construed as a compliance with the terms hereof and in accordance with the ownership of the land and binding on all successors in interest of Lessor hereto. The Lessee shall not be held responsible for the payment of such rentals or royalties to such new owners until the same have been furnished with a certified copy of the recorded instrument, and in case of any transfer of the leasehold estate or of any part thereof, or of any interest in the rentals or royalties hereunder, the Lessee shall be furnished with a transfer or transfers, or certified copies thereof

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Par. 9. It is further agreed that in case of change of ownership of any of the land, or of this leasehold, that the rentals shall be apportioned in accordance with the acreage each tract bears or assigned because entitled to.

Par. 8. It is further agreed that any rentals paid and received hereunder shall constitute a consideration, and only for the day in dollars the well had for whether the right to pay future rentals to keep the lease in full force and effect would do thing in consideration, and any such rentals ... paid shall be deemed and considered as adequate consideration for all the rights hereby granted. ... Par. 1. ... the event of any of the land d ... ribed being classified as mineral and the State of Texas is due its part of the Oil & Gas Royalty above provided for, then it is agreed that Lessee herein shall deduct and pay the State of Texas its prorata part of the royalties to which it may be entitled under such ...ade and provided in the event of the production of oil or gas from any of the lands containing such mineral classification, said lessee is also authorized to deduct from the ... Bonus to be paid for this le... the 10¢ per acre Annual Rental due the State under this lease, and thereafter deduct from the ...al or Delay Payments provided for herein the Annual Rental due the State. In the event it develops that all or any part of the acreage herein leased is subject to the Mineral Classification then Lessors execute this instrument in their individual capacities and as Agents for the State of Texas which they are authorized to do under the Acts governing the leasing of lands with Mineral Classification.

6-12: Paragraph 1. Lessee has this day paid to Lessor the sum of Twenty-Two Thousand, Eight Hundred and Eighty-Five and 50/100- - - - - - - - - - - - - - - ($22,885.50---) DOLLARS, the receipt of which is hereby acknowledged, which payment is received in full payment and satisfaction and is deemed sufficient consideration for each and every right hereby granted. It is stipulated and agreed that this instrument embraces the entire contract between the parties, and that no promises or representations of any kind not embraced herein have been made to induce the execution of this contract.

IN TESTIMONY WHEREOF the parties hereto have duly executed this instrument, on this the 17th ... day of ... A. D. 1935, the parties hereto acting in person or by duly authorized agent.

Witness:

E. N. Woodall
E. E. Woodall
E. K. Bowman
Madge Bowman
F. E. Woodall

Lessor.

GULF PRODUCTION COMPANY,
Lessee.
By Glen Garrett
Agent.

ACKNOWLEDGMENTS

THE STATE OF TEXAS, } Before me, the undersigned authority
County of TARRANT }

a Notary Public in and for the County of TARRANT and State of Texas, on this day personally appeared W.W. WARNELL

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 17th day of JULY, A. D. 1935.

C. C. Patterson, Jr.
Notary Public,
in and for TARRANT County, Texas.

THE STATE OF TEXAS, } Before me, the undersigned authority
County of TARRANT }

a Notary Public in and for the County of TARRANT and State of Texas, on this day personally appeared Glen Garrett known to me to be the person whose name is subscribed to the foregoing instrument as Agent of Gulf Production Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said Gulf Production Company.

Given under my hand and seal of office on this the 20th day of JULY, A. D. 1935.

M. M. Patterson
Notary Public,
in and for TARRANT County, Texas.

THE STATE OF TEXAS, } Before me, the undersigned authority
County of TARRANT }

a Notary Public in and for the County of TARRANT and State of Texas, on this day personally appeared EVA WARNELL, wife of W.W. WARNELL, known to me to be the person whose name is subscribed to the foregoing instrument and having been examined by me privily and apart from her husband, and having the same fully explained to her, the said EVA WARNELL ... she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office on the 19th day of JULY, A. D. 1935.

C. C. Patterson, Jr.

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GULF PRODUCTION CO.
P. O. DRAWER 737
LAND DEPT.
FORT WORTH, TEXAS

GULF PRODUCTION CO.
Post Office address of Lessee: Fort Worth, Texas

OIL AND GAS LEASE
TEXAS

No. 10952
10952

TO

Recorded this the 29th day of July A.D. 1935, at 2 o'clock P.M.
in Book 10 Page 397
Deed Records of Crane County, Texas.
By Glen Garrett Deputy.
County Clerk.

Filed for Record this the 29th day of July A.D. 1935, at 2 o'clock P.M.
By Glen Garrett Deputy.
County Clerk.

THE STATE OF TEXAS:
COUNTY OF CRANE : BEFORE ME, the undersigned authority, a notary public, in and for the County and State aforesaid, on this day personally appeared E.K.BOWMAN and Wife, MADGE BOWMAN, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and the said MADGE BOWMAN, wife of the said E.K.BOWMAN, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said MADGE BOWMAN acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.
GIVEN UNDER MY HAND and seal of office on this the 17 day of JULY, A. D. 1935.

Ceal Cabin, County Clerk,
Notary Public in and for CRANE COUNTY, Texas.
By Mrs. Ceal Cabin, Deputy.

THE STATE OF TEXAS:
COUNTY OF CRANE : BEFORE ME, the undersigned authority, a notary public in and for the County and State aforesaid, on this day personally appeared F.E.WOODALL, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.
GIVEN UNDER MY HAND and seal of office on this the 17th day of JULY, A.D.1935.

C. C. Patterson, Jr.
Notary Public in and for CRANE County, Texas.

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1 Lease
10 Gulf
Oil & Gas & Minerals Assn
W. W. Blakeslee et al
To
Gulf Production Co.
Assignment

This is original
recorded Lease: do
not take from file.
use Photo copy.
DO NOT MUTILATE
THIS INSTRUMENT.

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THE STATE OF TEXAS:
COUNTY OF TARRANT:

WHEREAS, on July Fourteenth, A.D. 1925, W. N. Waddell and wife, Ella Waddell, of Fort Worth, Tarrant County, Texas, E. K. Bowman and wife, Madge Bowman and F. E. Waddell of Crane County, Texas, as Lessors, made, executed and delivered unto the GULF PRODUCTION COMPANY, as Lessee, an Oil, Gas & Mineral Lease covering Forty-five Thousand, Seven Hundred and Seventy-one (45,771) acres of land, more or less, in Crane County, Texas, and which lease is duly recorded in Volume No. 10, at Page 397 et seq. of the Crane County deed records, to which lease and the record thereof reference is here made; and

WHEREAS, by instrument of even date herewith, the said GULF PRODUCTION COMPANY, at the special instance and request of the above named lessors, has sold, transferred and conveyed said above described lease and leasehold estate, and all the rights therein conveyed and secured, unto Wm Blakeslee of Travis County, Texas, insofar only as said lease and leasehold relates to and effects Section Sixty-eight (68), in Block "X", C. C. S. D. & R. G. N. G. R. R. Co. Lands, Certificate No. 1335, Abstract No. 425, containing Six Hundred and Forty (640) Acres of land, more or less, in Crane County, Texas, with the understanding and agreement that the undersigned Lessors would substitute for said Section Sixty-eight (68) so assigned to said Wm Blakeslee, and bring under the

terms of said mineral lease aforesaid what is known as Survey Number Thirteen (13) in Block Two (2), H. & T. C. R. R. Co. Lands, Certificate No. 40/4773, Abstract No. 127, containing Six Hundred and Forty (640) Acres, more or less, in Crane County, Texas, the same as though said Survey Number Thirteen (13) had also been originally embraced and included in said mineral lease.

NOW THEREFORE, Know All Men by These Presents, that we, W. N. Waddell and wife, Ella Waddell, E. K. Bowman and wife, Madge Bowman and F. E. Waddell, a single man, in consideration of the premises, and the further sum of Ten and No/100 ($10.00) Dollars to us in hand paid by the GULF PRODUCTION COMPANY, the receipt of which is hereby acknowledged, have demised, leased and let, and do by these presents demise, lease and let unto the said GULF PRODUCTION COMPANY, a Texas Corporation, Survey Number Thirteen (13), in Block Number Two (2), H. & T. C. R. R. Co. Lands, Certificate No. 40/4773, Abstract No. 127,

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containing Six Hundred and Forty (640) Acres of land, more or less in Crane County, Texas, for the purposes, and under the terms and conditions, as set forth in the Mineral Lease referred to above, as having been executed by us on July 14th, 1925, and recorded in Volume No. 10, at Page No. 397 et seq. of the Crane County deed records, the same as though said Survey Number Thirteen (13), Block Two (2), has been originally embraced in said mineral lease.

TO HAVE AND TO HOLD unto the said GULF PRODUCTION COMPANY, Lessee herein, its successors and assigns, upon the same terms and conditions of the Mineral Lease above mentioned, and the said Survey Number Thirteen (13), in Block Two (2), herein more fully described, is by this instrument brought under the terms of said original lease aforesaid, and shall be considered as part of, and included within said original lease, and in all respects subject to its terms, conditions and provisions, the same as though originally incorporated therein; and the said original lease shall remain in full force and effect, unchanged and unaltered by this instrument, with the exception however, that the total acreage embraced therein shall now be considered as Forty-six Thousand, Four Hundred and Eleven (46,411) Acres of land, more or less, and that the amount of rental now due and payable under the terms of said Mineral Lease Contract shall be a total of Five Thousand, Eight Hundred and One and 37/100 ($5,801.37) Dollars, for each Six (6) Months extension, instead of Five Thousand, Seven Hundred and Twenty-one and 37/100 ($5,721.37) Dollars, as said Lease Contract now provides.

IN TESTIMONY WHEREOF We have duly executed this instrument on the 16th day of March, A. D. 1926.

/s/ W. N. WADDELL
/s/ ELLA WADDELL
/s/ E. K. BOWMAN
/s/ MADGE BOWMAN
/s/ F. E. WADDELL
LESSORS.

GULF PRODUCTION COMPANY, LESSEE
By /s/ FRED O. OBERWETTER
Agent.

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THE STATE OF TEXAS:
COUNTY OF TARRANT:

BEFORE ME, the undersigned authority, a Notary Public in and for the County and State aforesaid, on this day personally appeared W. N. WADDELL AND Wife, ELLA WADDELL, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and the said ELLA WADDELL, wife of the said W. N. Waddell, having been examined by me privily and apart from her husband, and having the same by me fully explained to her, she the said ELLA WADDELL acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

GIVEN UNDER MY HAND and seal of office on this the 10th day of May, AD 1926.

/s/ CARA CHILES
Notary Public in and for Tarrant County, Texas.

THE STATE OF TEXAS:
COUNTY OF ECTOR:

BEFORE ME, the undersigned authority, in and for the County and State aforesaid, on this day personally appeared E. K. BOWMAN and Wife, MADGE BOWMAN, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, and the said MADGE BOWMAN, wife of the said E. K. Bowman, having been examined by me privily and apart from her husband, and having the same by me fully explained to her, she the said MADGE BOWMAN, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

GIVEN UNDER MY HAND and seal of office on this the 8th day of May, AD 1926.

/s/ CARL AKERS, County Clerk
in and for Ector County, Texas.

THE STATE OF TEXAS:
COUNTY OF ECTOR:

BEFORE ME, the undersigned authority, in and for the County and State aforesaid, on this day personally appeared F. E. WADDELL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND and seal of office on this the 22nd day of March AD 1926.

/s/ CARL AKERS, County Clerk
in and for Ector County, Texas.

THE STATE OF TEXAS:
COUNTY OF TARRANT:

BEFORE ME, the undersigned authority, a Notary Public in and for the County and State aforesaid, on this day personally appeared FRED O. OBERWETTER, known to me to be the person whose name is subscribed to the foregoing instrument as AGENT for GULF PRODUCTION COMPANY, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and as the act and deed of said GULF PRODUCTION COMPANY.

GIVEN UNDER MY HAND and seal of office on this the 10th day of May AD 1926.

/s/ M. A. McDONALD
Notary Public in and for Tarrant County, Texas.

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THE STATE OF TEXAS,
County of Baton } I, Carl Atkin, Clerk of the County Court of said County, do hereby certify that the above instrument of writing, dated on the 16th day of May, 1926, with its Certificate of Authentication, was filed for record in my office, this 11th day of May, 1926, at 1:45 o'clock P. M., and duly recorded this 12th day of May, 1926, at 12 o'clock M., in the Record of Crane County, in Vol 12, on page 5, 205-206

WITNESS my hand and the seal of the County Court of said County, at office in Crane, Texas, the day and year last above written.

Carl Atkin
Clerk C. C. Texas
By Mrs. Ida Webb Deputy.

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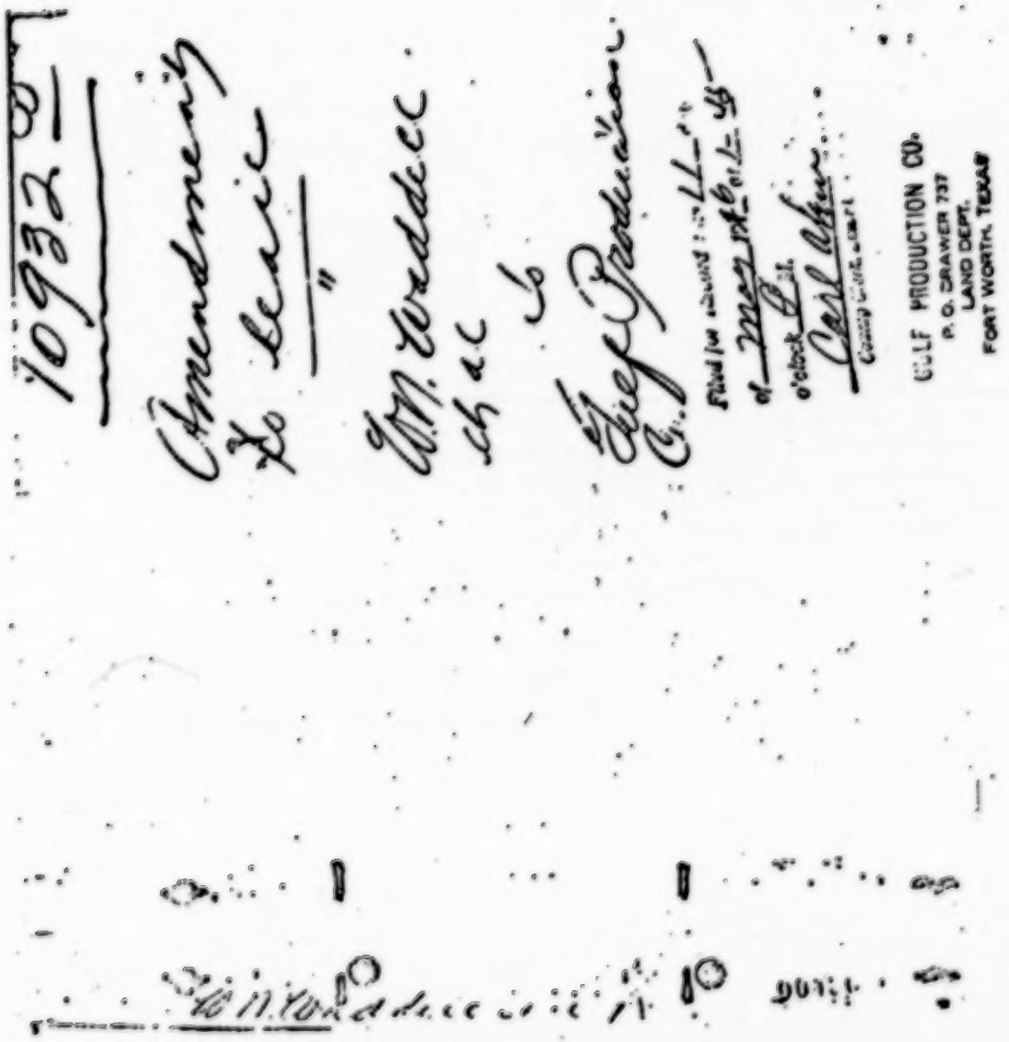

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EL PASO NATURAL GAS COMPANY

OWNERS OF THE REVERSIONARY MINERAL INTEREST RIGHTS TO THE OIL, GAS, AND OTHER MINERALS PRODUCED FROM THE ACREAGE COVERED BY THE 50-YEAR FIXED TERM LEASE

According to El Paso's information and belief, the following list of individuals and corporations are owners of the reversionary mineral interest rights to the oil, gas, and other minerals produced from the acreage covered by the 50-year fixed term lease. This list is the same as the list of defendants in Plaintiffs' Original Petition in *Gulf Oil Corporation* v. *Southland Royalty*, 496 S.W. 2d 547 (1973).

(1) Southland Royalty Company, a Delaware corporation, with the C T Corporation System, Republic National Bank Building, Dallas, Texas, as its agent for service.

(2) Exxon Corporation, a Delaware corporation, with L. J. Weigle, 800 Bell Avenue, Houston, Texas, as its agent for service.

(3) Gertrude Goldberg, Trustee of the Myron D. Goldberg Residuary Trust, a resident of Chicago, Cook County, Illinois; and Harris Trust and Savings Bank, Trustee of Myron D. Goldberg Residuary Trust, a corporation, with an office and place of business at 111 West Monroe Street, Chicago, Illinois.

(4) B. B. Stone, a resident of Tarrant County, Texas, whose address is 625 Fort Worth National Bank Building, Fort Worth, Texas.

(5) Mary Alice Wade, a widow, a resident of Potter County, Texas, whose address is 37 Oldham Circle, Amarillo, Texas.

(6) Dorothy Bryan Galbreath, a resident of the State of Ohio, whose address is 100 East Broad Street, Columbus, Ohio.

(7) The Fort Worth National Bank of Fort Worth, Texas, as Executor of the Estate of B. L. Agerton, Deceased, and as Trustee under the Will of B. L. Agerton, Deceased, a national banking association with its principal office and agent for service of process at the Fort Worth National Bank Building, Fort Worth, Texas. Administration on the Estate of B. L. Agerton, Deceased, is still open and pending.

(8) Ed Wagner and wife, Ruth Wagner, residents of Tarrant County, Texas, whose address is 3415 Dorothy Lane South, Fort Worth, Texas.

(9) Gid J. Bryan, a resident of Dallas County, Texas, whose address is 3436 Normandy, Dallas, Texas.

(10) Ruth Daggett, a resident of Tarrant County, Texas, whose address is 1936 Hurley, Fort Worth, Texas.

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(11) Alonzo Monk Bryan, a resident of the State of Missouri, whose address is 1103 Sunset Drive, Columbia, Missouri.

(12) Georgia Lee, a resident of Tarrant County, Texas, whose address is 1504 North Riverside Drive, Fort Worth, Texas.

(13) W. D. Bryan, a resident of Tarrant County, Texas, whose address is 3815 Crestline Road, Fort Worth, Texas.

(14) Virginia K. Smith, Individually, and as Independent Executrix of the Estate of Hugh B. Smith, Deceased, a resident of Tarrant County Texas, whose address is 312 North Bailey, Fort Worth, Texas. Administration on the Estate of Hugh B. Smith, Deceased, is still open and pending.

(15) Lucille P. Markey, Warren Wright, Jr., Gene Markey, Edwin S. Ford, and the First National Bank of Chicago, Illinois, Trustees under the Will of Warren Wright, Deceased, with the First National Bank of Chicago being a national banking association and having an office and agent for service in the First National Bank of Chicago, Illinois, and with the remainder of said Trustees being residents of the State of Illinois, whose addresses are One North La Salle Street, Room 1809, Chicago, Illinois.

(16) Mrs. Ella Alluisi, a resident of the State of California, whose address is 1228 Martin Road, Santa Cruz, California.

(17) Mrs. Jesse Andrews, a resident of Harris County, Texas, whose address is c/o Baker, Botts, Shepherd and Coates, 1600 Esperson Building, Houston, Texas.

(18) James A. Baker, Jr., a resident of Harris County, Texas, whose address is 1404 Dunlavy, Houston, Texas.

(20) W. Browne Baker, a resident of Harris County, Texas, whose address is 637 Capital National Bank Building, Houston, Texas.

(21) The First City National Bank of New York, Executor of the Estate of Lindsay Bradford, Deceased, a national banking association, with an office and agent for service in the First National City Bank, 20 Exchange Place, New York, New York. Administration on the Estate of Lindsay Bradford, Deceased, is still open and pending.

(22) Zenaide V. Bradley, Executrix of the Estate of Walter Bradley, Deceased, a resident of the State of New Hampshire, whose address is Far Away Farm, Whitefield, New Hampshire. Administration on the Estate of Walter Bradley, Deceased, is still open and pending.

(23) The First National City Trust Company, Trustee under the Will of G. G. Browne, Deceased, a national banking association, with an office and agent for service at the First National City Trust Company, 22 William Street, New York, New York.

(24) Junius H. Browne, a resident of the State of California, whose address is 24 Ralston Road, Atherton, California.

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(25) Mrs. John P. Bullington, Individually, and as Independent Executrix of the Estate of John P. Bullington, Deceased, a resident of the State of New York, whose address is c/o United States Trust Company, 45 Wall Street, New York, New York. Administration on the Estate of John P. Bullington, Deceased, is still open and pending.

(26) Francis G. Coates, a resident of Harris County, Texas, whose address is c/o Baker, Botts, Shepherd and Coates, 1600 Esperson Building, Houston, Texas.

(27) Mrs. Ann M. Cole, a resident of Harris County, Texas, whose address is 3235 Ella Lee Lane, Houston, Texas.

(28) Mrs. Margaret M. Peabody, a resident of the State of New York, whose address is 635 Madison Avenue, New York, New York.

(29) Mrs. Justin A. Eaton, a resident of the State of New York, whose address is c/o First National City Bank, c/o#535942, 399 Park Avenue, New York, New York.

(30) Mrs. Margaret V. (Ellis) Braatz, a resident of the State of New Jersey, whose address is 14 Glenside Road, South Orange, New Jersey.

(31) Mrs. Jean Ferry, a resident of the State of New York, whose address is c/o City Bank Farmers Trust Company, 22 William Street, New York, New York.

(32) Mrs. Edna Foreman, a resident of Polk County, Texas, whose address is Livingston, Texas.

(33) Gaius G. Gannon, Jr., Executor of the Estate of Gaius G. Gannon, Deceased, a resident of Harris County, Texas, whose address is 2151 Troon Road,

Houston Texas. Administration on the Estate of Gaius G. Gannon, Deceased, is still open and pending.

(34) Palmer Hutcheson, a resident of Harris County, Texas, whose address is c/o Hutcheson, Taliferro and Hutcheson, 2110 Tennessee Building, Houston, Texas.

(35) Mrs. Alice Baker Jones, a resident of Harris County, Texas, whose address is 1213 Berthea, Houston, Texas.

(36) H. Malcolm Lovett, a resident of Harris County, Texas, whose address is c/o Baker, Botts, Shepherd and Coates, 1600 Esperson Building, Houston, Texas.

(37) L. R. Mason, a resident of the State of New York, whose address is 666 Fifth Avenue, New York, New York.

(38) John I. Moore, a resident of Tom Green County, Texas, whose address is San Angelo, Texas.

(39) F. H. McGuigan, Trustee under the Will of P. D. Moore, Deceased, a resident of Midland County, Texas, whose address is 2009 Community Lane, Midland, Texas.

(40) Mrs. Ruth Baker Moore, a resident of Harris County, Texas, whose address is 6054 Riverview Way, Houston, Texas.

(41) Charles William Morgan, a resident of the State of New York, whose address is Jackson Street, Box 95, New Suffolk, Long Island, New York.

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(42) Robert U. Parish, a resident of Harris County, Texas, whose address is 5922 Valley Forge, Houston, Texas.

(43) Mrs. Sarah Scurry, a resident of Harris County, Texas, whose address is c/o Baker, Botts, Shepherd and Coates, 1600 Esperson Building, Houston, Texas.

(44) Helga Shepherd, Executrix of the Estate of James L. Shepherd, Jr., Deceased a resident of Harris County, Texas, whose address is 2105 Brentwood Drive, Houston, Texas. Administration on the Estate of James L. Shepherd, Jr., Deceased, is still open and pending.

(45) B. A. Tompkins, a resident of the State of New York, whose address is 551 Fifth Avenue, New York, New York.

(46) H. Leland Vaughan, Independent Executor and Trustee of the Estate of Mrs. Adele S. Vaughan, Deceased a resident of the State of California, whose address is 307 Western Drive, Richmond, California. Administration on the Estate of Mrs. Adele S. Vaughan, Deceased, is still open and pending.

(47) Mrs. Charles J. Hubbard, a resident of the State of New York, whose address is 7 Beech Hill Road, Huntington, New York.

(48) Frank Wharton Bradley, a resident of the State of California, whose address is 306 Diablo Court, Palo Alto, California.

(49) Walter H. Walne, Jr., a resident of Midland County, Texas, whose address is 236 Central Building, Midland, Texas.

(50) Mrs. Catherine P. Walne, a resident of Midland, Texas, whose address is 236 Central Building, Midland, Texas.

(51) Harold T. White, Jr., a resident of the State of New York, whose address is c/o White, Weld & Company, 20 Broad Street, New York, New York.

(52) John U. White, a resident of the State of Connecticut, whose address is 90 Lincoln, Stamford, Connecticut.

(53) Homer L. Bruce, Jr., a resident of Harris County, Texas, whose address is 5313 Shady River Road, Houston, Texas.

(54) Mrs. Caroline B. Vanderhoef, a resident of Harris County, Texas, whose address is 1230 Esperson Building, Houston, Texas.

(55) James L. Shepherd, III, a resident of McLennan County, Texas, whose address is 209 Castle Avenue, Waco, Texas.

(56) Mrs. Cecilia Shepherd Cambias, a resident of the State of Louisiana, whose address is 422 Burdette Street, New Orleans, Louisiana.

(57) Mrs. Rose E. Milmine Wolf, a resident of the State of New York, whose address is c/o First National Bank, 309 Park Avenue, New York, New York, Attention: Investment Advisory Department.

(58) Brady Marshall Cole, a resident of the State of Massachusetts, whose address is Apartment 707, East Peabody Terrace, Cambridge, Massachusetts.

(59) Clarence Wharton Cole, a resident of the State of Virginia, whose address is 1600 Joyce Street, Apartment B801, Arlington, Virginia.

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(60) Richard Roesser Cole, a resident of Travis County, Texas, whose address is 605 West 31½ Street, Austin, Texas.

(61) The Rembrandt Corporation, a foreign corporation, with an office and agent for service c/o Turk, Marsh, Ouchterloney and Kelley, 666 Fifth Avenue, New York, New York.

(62) Mrs. Sophy Mason Burnam, a resident of the State of New York, whose address is c/o L. R. Mason, 666 Fifth Avenue, New York, New York.

(63) Pauline A. McLeod, a feme sole, a resident of the State of New York, whose address is c/o First National City Bank, Lenos Hill Branch, 167 East 72nd Street, New York, New York.

(64) Mrs. Elizabeth Hudson Penn, a resident of Dallas County, Texas, whose address is 1065 Hartford Building, Dallas, Texas.

(65) Nancy Elizabeth Penson, a resident of Dallas County, Texas, whose address is 1065 Hartford Building, Dallas, Texas.

(66) The Republic National Bank of Dallas, Trustee of Robert Lee John Penn, a national banking as-

sociation, with an office and agent for service at the Republic National Bank of Dallas, Dallas, Texas.

(67) William Y. Penn and the First National Bank in Dallas, Dallas, Texas, Trustees of the following named Trusts: the Evelyn Penn Trust; the Robert Read Penn No. 2 Trust; the David Cawthon Penn No. 2 Trust; the William Travis Penn No. 2 Trust; the Frank Walter Penn Trust; and the Robert L. Penn Trust. The said William Y. Penn is a resident of Dallas County, Texas, whose address is 1065 Hartford Building, Dallas, Texas. The First National Bank in Dallas, Dallas, Texas, is a national banking association with an office and agent for service in the First National Bank in Dallas, Dallas, Texas.

(68) Elizabeth Hudson Penn and John G. Penson, Trustees of the following named Trusts: the Nancy Penson Trust; the John G. Penson Trust; the Anne E. Penson No. 2 Trust; and the Susan L. Penson No. 2 Trust. Elizabeth Hudson Penn is a resident of Dallas County, Texas, whose address is 1065 Hartford Building, Dallas, Texas. John G. Penson is a resident of Dallas County, Texas, whose address is 4470 First National Bank Building, Dallas, Texas.

(69) Jack Stieren, a resident of Bexar County, Texas, whose address is 302 Belvedere Drive, San Antonio, Texas.

(70) Dena Ida Koenig, a resident of Dallas County, Texas, whose address is c/o Barr and Carmody, 1106 Kirby Building, Dallas, Texas.

(71) J. L. Hardin and wife, Velma Walker Hardin, residents of Lubbock County, Texas, whose address is Lubbock, Texas.

(72) The Citizens National Bank of Lubbock, Independent Executor and Trustee under the Will of Bryan Walker, Deceased, a national banking association with an office and agent for service at the Citizens National Bank of Lubbock, Lubbock, Texas. Administration of the Estate of Bryan Walker, Deceased, is still open and pending.

(73) Nora Walker, a widow, a resident of Lubbock County, Texas, whose address is 302 Uvalde, Lubbock, Texas.

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(74) Royalty Roundup, Inc., a Texas corporation, with Neal Marriott, 104 Oil Industries Building, Corpus Christi, Neuces County, Texas, as its agent for service.

(75) Palmer E. Koenig, a resident of the State of Maryland, whose address is 17 Riggs Road, Linstead on Severn, Severna Park, Maryland.

(76) Lucille Parker Markey, as Executrix of the Estate of Warren Wright, Deceased, a resident of Cook County, Illinois, whose address is One North La Salle Street, Room 1809, Chicago, Illinois. Administration of the Estate of Warren Wright, Deceased, is still open and pending.

(77) Helen K. Graves, a resident of Dallas County, Texas, whose address is 3512 Cornell Avenue, Dallas, Texas.

(78) The First National Bank of Midland, Midland, Texas, a national banking association with its principal office of business at the First National Bank Building, Midland, Texas, and with C. J. Kelly, President, as an agent for service.

*(79) M. J. Kjar, a resident of Howard County, Texas, whose address is Big Spring, Texas.

*(80) Mullinax, Wells, Morris and Mauzy, a partnership composed of Otto B. Mullinax, L. N. D. Wells, Charles J. Morris and Oscar H. Mauzy, with its principal place of business at 1601 National Bankers Life Building, Dallas, Texas, where service of process may be obtained upon the members of the partnership. All of the members of the partnership are residents of Dallas, Dallas County, Texas.

*(81) George H. Echols, a resident of Harris County, Texas, whose address is 11205 South Main Street, Houston, Texas.

*(82) Lee A. Curtis, Jr., a resident of the State of Georgia, whose address is Room 210, First Federal Savings and Loan Building, Gainesville, Hall County, Georgia.

*(83) Boyd Enterprises, Inc., a Texas corporation with its principal place of business at 2003 Wilco Building, Midland, Texas, and with Walter K. Boyd, Jr., President, as an agent for service.

*(84) C. A. Semple, a resident of Midland County, Texas, whose address is 1605 Gulf Avenue, Midland, Texas.

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* The aforementioned Plaintiffs' Original Petition refers to this person as an owner of leasehold interests, rather than as a reversionary interest owner.

*(85) Marvin L. Smith, a resident of Ector County, Texas, whose address is 3641 East County Road, Odessa, Texas.

*(86) Capitan Drilling Company, Inc., a Texas corporation, with W. N. Rees, 3641 East County Road, Odessa, Texas, as its agent for service.

*(87) Alps Oil Company, a partnership composed of J. W. Peery, R. S. Searls, Jr., W. H. Stroud, and D. M. Aldridge, with its principal place of business at 802 First National Bank Building, Odessa, Ector County, Texas, where service of process may be obtained. All of the members of this partnership are residents of Odessa, Ector County, Texas.

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(88) Harold T. White, Jr., John U. White, and Gunnar Maske, Executors of the Estate of Elizabeth Maske, Deceased, and Trustees under the Will of Elizabeth Maske, Deceased. Harold T. White, Jr., is a resident of the State of New York, whose address is c/o White, Weld and Company, 20 Broad Street, New York, New York. Gunnar Maske, a resident of the State of Connecticut, whose address is West Road, New Canaan, Connecticut. John U. White is a resident of the State of Connecticut, whose address is 90 Lincoln, Stamford, Connecticut. Administration on the Estate of Elizabeth Maske, Deceased, is still open and pending.

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* The aforementioned Plaintiffs' Original Petition refers to this person as an owner of leasehold interests, rather than as a reversionary interest owner.

(89) Neal Marriott, Mary Shelton and Evelyn Bender, known stockholders of Royalty Roundup, Inc., a Texas corporation whose charter has been forfeited by the Secretary of State of the State of Texas, and all of the unknown stockholders of Royalty Roundup, Inc. Neal Marriott, Mary Shelton and Evelyn Bender are residents of Nueces County, Texas, with the following addresses: Neal Marriott, 104 Oil Industries Building, Corpus Christi, Texas; Mary Shelton and Evelyn Bender, Corpus Christi, Texas.

(90) Jerome B. Herbert, Mary Halcomb Herbert and Marie McCutcheon, known stockholders of Trans-Continental Resources Corporation, a Texas corporation whose charter has been forfeited by the Secretary of State of the State of Texas, and all of the unknown stockholders of Trans-Continental Resources Corporation. Jerome B. Herbert, Hary Halcomb Herbert and Marie McCutcheon are residents of Dallas County, Texas, with the following addresses: Marie McCutcheon, 330 Rio Grande Building, Dallas, Texas; Jerome B. Herbert and Mary Halcomb Herbert, Dallas, Texas.

(91) Lee A. Curtis, Jr., Jerome B. Herbert and Robert C. Boozer, known stockholders of Greater Georgia Investment Corporation, a Georgia corporation, declared not to be in good standing by the Secretary of State of the State of Georgia, and all of the unknown stockholders of Greater Georgia Investment Corporatin. Lee A. Curtis, Jr., and Jerome B. Herbert are residents of the State of Georgia whose address is 1029 Fulton Federal Building, Atlanta, Fulton County, Georgia. Robert C. Boozer is a resident of the State of Georgia whose address is 80 Broad Street, N.W., Atlanta, Fulton County, Georgia.

*(92) Greater Georgia Investment Corporation, a Georgia corporation, with its principal office and place of business at 1029 Fulton Federal Building, Atlanta, Fulton County, Georgia, and with Lee A. Curtis, Jr., President, as its agent for service.

*(93) Trans-Continental Resources Corporation, a Texas corporation, with Marie McCutcheon, 330 Rio Grande Building, Dallas, Texas, as its agent for service.

*(94) Willard McClain, a resident of Dallas County, Texas, whose address is Box 2639, Dallas, Texas.

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*(95) Glenn T. Lang, Jr., a resident of Dallas County, Texas, whose address is 6550 Lange Circle, Dallas, Texas.

*(96) Morris I. Jaffe, a resident of Bexar County, Texas, whose address is San Antonio, Texas.

*(97) Da-Mik Oil Company, a foreign corporation, whose State of incorporation is unknown but which has a place of business and agent for service at 267 Meadows Building, Dallas, Texas.

*(98) A. L. Barnes, a resident of Midland County, Texas, whose address is 100 East Nobles, Midland, Texas.

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* The aforementioned Plaintiffs' Original Petition refers to this person as an owner of leasehold interests, rather than as a reversionary interest owner.

*(99) Robert F. Meyer, a resident of Midland County, Texas, whose address is 214 First Savings and Loan Building, Midland, Texas.

*(100) The American Bank of Commerce, Odessa, Texas, a Texas corporation, with its principal place of business and agent for service at the American Bank of Commerce in Odessa, Ector County, Texas.

*(101) Sidney Barrows, Trustee, whose address is unknown.

*(102) Bank of the Southwest National Association of Houston, Texas, a national banking association with its principal place of business and agent for service at the Bank of the Southwest National Association in Houston, Harris County, Texas.

*(103) L. S. Melzer, a resident of Midland County, Texas, whose address is 407 North Loraine Street, Midland, Texas.

*(104) Charles F. Henderson, a resident of Midland County, Texas, whose address is 1202 West Storey, Midland, Texas.

(105) The unknown heirs of any person above named to whom there has accrued any claim of interest in and to the oil, gas and other minerals in and under and that may be produced from any of the lands described in the Lease, or to whom there has been granted any Interest in the oil, gas and other minerals in and under and that may be produced from any of the lands described in the Lease and the unknown stockholders of any of the above named corporations which is now defunct.

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* The aforementioned Plaintiffs' Original Petition refers to this person as an owner of leasehold interests, rather than as a reversionary interest owner.

(106) Any unknown person or claimant holding, taking or claiming the equitable or beneficial title to any interest of any kind in and to the oil, gas and other minerals in and under and that may be produced from any of the lands described in the Lease under any conveyance, lease, contract or other written instrument to any person or persons as trustee or trustees which does not disclose the name of such unknown person or claimant.

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(107) Any unknown person or claimant holding, acquiring or claiming title to any interest of any kind in the oil, gas and other minerals in and under and that may be produced from the lands described in the Lease, under or by virtue of any conveyance, lease, contract or other written instrument of record in the Office of the County Clerk of Crane County, Texas, to any association, joint stock company, partnership, in an association, company or firm name, whether named above or not, or to any corporation (not shown to be a corporation), whether named above or not, without disclosing the names of the members, shareholders or partners or persons owning interests in such association, company or firm, and such association, joint stock company or partnership was thereafter dissolved and the persons or claimants holding, acquiring or claiming title after dissolution are not disclosed in the conveyance, lease, contract or other written instrument and are unknown.

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GULF OIL CORPORATION v.
SOUTHLAND ROYALTY COMPANY

TEX. 547

Cite as 496 S.W.2d 547

GULF OIL CORPORATION ET AL., PETITIONERS,

v.

SOUTHLAND ROYALTY COMPANY ET AL., RESPONDENTS.

No. B-3385.

Supreme Court of Texas.

Rehearing Denied July 25, 1973.

Suit for declaratory judgment as to longevity of oil and gas lease. The 109th District Court, Crane County, Austin, J., entered judgment for defendants, and plaintiffs appealed. The Court of Civil Appeals, Ramsey, C. J., 478 S.W.2d 583, affirmed, and plaintiffs brought error. The Supreme Court, Reavley, J., held that in such lease providing that it would not remain in force longer than 50 years, provision that when drilling or other operations were delayed by specified occurrences or as result of cause beyond control of lessee "the time of such delay or interruption shall not be counted against the lessee—anything in this lease to the contrary notwithstanding." did not require that operational delay time be accumulated and used to compute expiration date of 50-year term, but to excuse lessee for failure to engage in operations required by lease if failure was due to specified delays.

Judgments affirmed.

Greenhill, C. J., filed concurring opinion.

1. Mines and Minerals §78(1)

In oil and gas lease providing that it would not remain in force longer than 50 years, provision that when drilling or other operations were delayed by specified occurrences or as result of cause beyond control of lessee "the time of such delay or interruption shall not be counted against the lessee—anything in this lease to the contrary notwithstanding." did not require that operational delay time be accumulated and used to compute expiration date of 50-year term, but to excuse lessee for failure to engage in operations required by lease if failure was due to specified delays.

2. Mines and Minerals §73½

Generally, duration of estate granted by oil and gas lease is determined by habendum clause, but instrument may provide elsewhere for the enlargement of the term stated in the habendum.

3. Mines and Minerals §73½

Questions as to duration of estate granted by oil and gas lease always involves resolving the intention of the parties from the entire instrument.

Ira Butler, Fort Worth, Jackson, Walker, Winstead, Cantwell & Miller, A. W. Walker, Jr., Dallas, Jesse P. Luton, Jr., Morgan L. Copeland, and K. C. Keener,

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Houston, Mullinax, Wells, Mauzy & Babb, Otto B. Mullinax, Dallas, Simon & Simon, Henry Simons, Sr. Fort Worth, Arthur E. Moers, Jr., Houston, Royce H. Savage, Edwin S. Hurst, Tulsa, Okl., William L. Kerr, Midland, Ken G. Spencer, Crane, for petitioners.

Hudson, Keltner, Smith & Cunningham, Luther M. Hudson, and J. B. Cunningham, Fort Worth, Stubbeman, McRae, Sealy, Laughlin & Browder, Tom Sealy, W. B. Browder, Jr., and F. H. Pannill, Midland, Walter B. Morgan, J. Lamar Hart, and Dillard W. Baker, Houston, C. Bennett, Crane, Joseph A. Beyer, Spur, Stroud & Smith, John R. Feather, Dallas, G. Bert Smith, Jr., Andrews, Hopkins, Sutter, Owen, Mulroy & Davis, William P. Sutter, Chicago, Ill., for respondents.

REAVLEY, Justice.

This is a suit for declaratory judgment to determine the longevity of an oil and gas lease. Gulf Oil Corporation and six others filed the suit against Southland Royalty Company and eighty-seven others to resolve this controversy: Southland and other owners of the reversionary mineral interest contend that Gulf's leasehold estate expires on July 14, 1975, which is fifty years after the date of its execution, while Gulf contends that delays of its production due to proration orders of the

Railroad Commission should not be counted in the fifty years to which it is entitled and that termination of the lease should not occur until 1987. When Gulf rested its presentation in the trial court, the judge withdrew the case from the jury and entered judgment for defendants (Southland). The Court of Civil Appeals affirmed, holding that the terms of the lease fix its termination date at July 14, 1975. 478 S.W.2d 583.

The lease was executed on July 14, 1925 by W. N. Waddell et al., lessors, and Gulf Production Company (corporate predecessor of Gulf Oil Corporation), lessee. It leased to Gulf 45,771 acres of land in Crane County "with the exclusive right of exploiting the same for and producing oil and gas therefrom." Gulf commenced drilling operation on the land and has conducted operations thereupon continuously to the present. At the time of the trial Gulf was operating 925 producing oil and gas wells there.

The original lease is almost entirely a printed document. The name of the lessee, Gulf Production Company, and all of the words of the lease provisions set forth below, except for the dollar amount of delay rental and the name of the depository bank, were in the printed for that was used. The argument centers upon Section 1, Paragraph 2, which can be referred to as the habendum or term clause, and Section 7, which Southland refers to as a force majeure or excuse clause but to which Gulf gives overriding effect. The full text of these and other relevant lease provisions are here set forth.

SECTION 1.

. . . . . .

Par. 2. TO HAVE AND TO HOLD unto said Lessee and to Lessee's successors and assigns for the term of Twelve (12) years from the date hereof and as much longer thereafter as oil or gas (or other minerals, if produced hereunder) are produced from said land. Provided, that this lease shall not remain in force longer than fifty (40) years from this late, and provided further, that a temporary cessation of production due to cleaning out, working over or drilling deeper of any well, or similar causes occurring after production secured, shall not terminate this lease. And Lessor covenants that Lessor has good title to said land and will protect Lessee in the quiet and peaceable possession thereof.

Par. 3. Lessee agrees to begin operations for the drilling of a well on the premises within twelve (12) months from the date hereof, or, failing so to do, Lessee

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agrees to pay in the manner below stated for each six (6) months' period for which such drilling is delayed, not to exceed eighteen (18) such periods, the sum of

$5,721.37 Dollars, such payment to be made on or before the beginning of each such period and shall be made by paying the same to the Lessor in person or to the First National Bank of Ft. Worth, Texas, or Lessee may mail Lessee's check to Lessor in said sum in care of said Bank, payable to Lessor, said Bank being hereby constituted Lessor's agent to receive said funds for Lessor or to receive and deliver said check to said Lessor, as the case may be; in either of the three methods of making such payment Lessee may use Lessee's check and the mailing of said check be deemed making payment; if Lessee shall fail to make such payment in advance as above provided, and such failure or default shall continue for thirty (30) days after the due date of such payment, Lessor shall have the right to forfeit this lease.

. . . . . .

Par. 5. If while this lease is in force as herein provided, Lessee shall have begun operations in attempt to find oil or gas, then, without making any further payments Lessee may continue such attempt, and may make as many attempts as Lessee pleases; but if Lessee shall abandon such attempts for ninety (90) days without finding oil or gas in paying quantities, Lessee shall resume payment of the rentals falling due after the completion or abandonment of such well, at the next ensuing rental period beginning after such completion or abandonment; provided Lessee shall have at least ninety (90) days from the date of such abandonment of operations in which to make such payment and on resuming payment of rentals Lessee shall have the right to continue making the same or of beginning operations for the drilling of a well and to alternate such rights.

Par. 6. If operations shall not be begun on or before the expiration of ten (10) years from this date, this lease shall wholly terminate, but if, prior to the termination of such ten (10) years, Lessee shall have begun operations in attempt to find oil or gas and is engaged in such operations at the end of the ten-year period, then Lessee shall have the right to continue such operations and also to make as many additional attempts to find oil or gas as Lessee desires beyond the expiration of said ten-year period; provided, however, that these attempts so extending such rights beyond such ten years must be successive in the sense that, until oil or gas be found in paying quantities, not more than sixty (60) days shall elapse between the abandonment of work on one well and the beginning of operations on another, and provided further that this right to make attempts before the discovery of oil or gas shall not continue in any event longer than twelve (12) years from the date hereof.

. . . . . .

SECTION 7.

Paragraph I. When drilling or other operations are delayed or interrupted by storm, flood, or other act of God, by fire, war, rebellion, scarcity of water, insurrection, riots, strikes, scarcity of labor, differences with employees, or failure of carriers to transport or furnish facilities for transportation, or as the result of some order, requisition or necessity of the Government, or as the result of any cause whatsoever beyond the control of the Lessee, the time of such delay or interruption shall not be counted against the Lessee—anything in this lease to the contrary notwithstanding.

Under paragraphs 3 and 5 of section 1 the lessee is required to begin operations for the drilling of a well within twelve months or to pay rental (for each six months in advance). If operations have begun in the attempt to find oil and gas, no delay rentals need be

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paid while the attempt continues or a new operation is begun. Lessee is allowed ninety days after the abandonment of one well in which to begin operations for the drilling of a new well or to pay delay rentals.

Under paragraph 7 of section 1 the lease terminates if no operations are begun within ten years. If the lessee has begun operations in the attempt to find oil and gas and is engaged in such operations at the end of ten years, the lessee may continue and may make new attempts following the ten year period, but no more than sixty days may elapse between the abandonment of one well and the beginning of operations on another, and no attempt prior to discovery of oil and gas may continue after twelve years.

Under the terms of this lease the lessee is, or could be, faced with a number of different time periods: (1) The "lease shall not remain in force longer than fifty years from this date"; (2) Production must be obtained within twelve years from date; (3) Within twelve months from date, and every six months there-

after through ten years if no discovery is made, either rentals must be paid or operations must be conducted for the drilling of a well; (3a) If a well is abandoned during the ten years, rentals must be paid or another well begun within ninety days; (4) Operations to find oil or gas must be begun within ten years from date; (4a) If operations are unsuccessful and the attempt is abandoned after expiration of the ten year period, operations on another well must be begun within sixty days.

[1] It would be the effect of Gulf's contentions that the provisions of section 7 apply alike to each of the stated time periods and that no period (sixty days, ninety days, six months, twelve months, ten years, twelve years, or fifty years) is measured by the calendar alone, for the counting of the time of any period would be stopped so long as the lessee's operations are delayed or interrupted by any cause beyond its control. Gulf does not seek in this suit to save production time for any cause except for 4,661 days of lost production on the lease due to proration orders of the Railroad Commission during the period from January 1, 1938 through June 30, 1967. However, Gulf cannot prevail to any extent unless section 7 be construed to impose upon the fifty year limitation an interruption or extension for every cause named in section 7 which can be proved to exist or to have existed from July 14, 1925 until final termination.

Gulf has established that a substantial amount of oil production has been denied to it as the result of an order of government. In order to prevent waste, the Railroad Commission ordered all production of the wells on this land to be stopped during a total of 197

days between January 20, 1938 and March 23, 1940. Thereafter its monthly orders permitted production by most of the oil wells of their daily allowable volume, assumed to be that amount produced at the most efficient rate, for only a specified number of days of the month. However, the operator was given the choice of producing each well for the specified number of days in the month or of reducing the rate of production to a corresponding percentage to achieve the same total production for the month. In 1963 the Railroad Commission stopped using days as its measurement for this purpose and went to a percentage (the "market demand factor") which was applied to the scheduled daily allowable of each well to obtain the total production allowed. Gulf has tabulated the total days of denied production (multiplying the percentage by the days of the month to get the producing days where the order itself does not use days as the measurement) through the years from 1938 to 1967 and has arrived at a grand total of 4,661.444 days.

Gulf has *not* proved that all operations were interrupted on this lease at any time. To the contrary, it stipulated "that there was continuous drilling on the Waddell, et al, lease by Gulf from the time of com-

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mencement of the drilling of the first well up to and through the present time." Gulf points to the disjunc-

tive "or" in section 7: "When drilling or other operations are delayed . . ." etc. and argues that after production is obtained, time should not be counted for any purpose so long as *operations* are interrupted—even though drilling and other operations proceed apace. To reach that construction we are asked to reject a reasonable meaning of the disjunctive "drilling or other operations" and to give those words such effect as to exalt section 7 as regulator of a very long lasting lease. If section 7 is intended to do nothing more than save the lease for Gulf when interrupted from doing something that it is required to do by the lease (be that something drilling *or other operations*), the disjunctive is appropriate. Under Gulf's construction, every hour of every excused delay in a significant degree of its operations can be added to the fifty years before termination is finally reached. That construction would play havoc with the express proviso "that this lease shall not remain in force longer than fifty (50) years from this date."

Consider Gulf's position with reference to the wells which were not affected by the proration orders. Beginning in January 1944 Gulf enjoyed a discovery allowable because of opening a new field and by which for a limited time and for a limited number of wells no reduction was imposed on the production of the scheduled allowable for those wells. Since March 1945 it has operated marginal wells on the lease, these wells being incapable of producing more than a prescribed amount. Since 1960 Gulf has produced gas wells which are not associated with any oil reservoir. None of these wells were shut down or restricted by proration orders of the Railroad Commission. Gulf says that produc-

tion from these non-prorated wells was infinitesimal when compared with the production from the hundreds of top allowable oil wells. It proposes, however, an alternate computation of lost production if these non-prorated wells are to be considered. Gulf computes the percentage of the total daily scheduled allowable for the lease as a whole which is represented by the production from the non-prorated wells. That percentage multiplied by the shutdown days of a proration period gives the time credit to be allowed. Thus 34.795 days are deducted because of marginal wells, and 64.436 days are deducted because of discovery allowable oil wells. As for the gas wells, the cubic feet of gas produced is first converted into equivalent barrels of oil displacement in an oil reservoir, and then the same computation is made as for the non-prorated oil wells, giving a credit of 177.022 days.

Gulf's computations might well offer an equitable approach by which it could be redeemed for its lost oil production—if that is what the lease provides. But the lease is silent about the lessee's rights if some of its wells are not allowed to produce to full capacity; that is, the lease is silent unless its date of termination is changed by interruption of production. The express provision for the date of termination says nothing about production; it speaks only of time and dates. Gulf's cause bears a severe impediment because of the continuous drilling and production. Could we say that while drilling operations were being conducted and operating wells were producing oil and gas, the time (term) of the lease was standing still because other wells were not producing their full allowable? We would probably not reach that result unless the language of the lease permitted no other reasonable construction. But leaving aside that question, we turn

to the more fundamental inquiry: should the lease term be measured to last longer than July 14, 1975 even in the event of a complete shutdown of all drilling and operations by a cause beyond Gulf's control?

Gulf insists that the language of section 7 has that certain effect by providing that "the time of such delay or interruption shall not be counted against the Lessee—anything in this lease to the contrary notwithstanding." The final expression giving the sec-

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tion priority over any contrary provision of the lease does not decide what the section means and to what it is contrary. Finder v. Nyegaard, 367 S.W.2d 217 (Tex. Civ.App.1963, writ ref'd n. r. e.). This brings us to the meaning of the language that the time of a delay or interruption "shall not be counted against the Lessee." We are not compelled to read this to say that all operational delay time shall be accumulated and then used to compute the expiration date of the fifty year term. Counting time against lessee and counting time on the duration of the term of the lease are two different matters. The former treats lessee's compliance with the performance required of it by the lease. The most reasonable interpretation of section 7 is that it excuses lessee for the failure to drill or engage in operations required by other provisions of the lease so long as the failure is due to a delay or interruption specified by section 7. For example, if the lessee were

to abandon drilling in one hole during the eleventh year of the lease, by the specific provision of paragraph 6 the lease would terminate sixty days thereafter upon lessee's failure to begin operations on another well. However, if lessee's delay could be accounted for by a cause within section 7, the time of that delay would not be counted against lessee—paragraph 6 of section 1 to the contrary notwithstanding.

[2, 3] The duration of the estate granted is traditionally determined by the habendum clause. 2 Summers, The Law of Oil and Gas, Perm.Ed. § 303.1, p. 319. This need not be the case, for the instrument may provide elsewhere for the enlargement of the term stated in the habendum. *See* Stanolind Oil & Gas Co. v. Christian, 83 S.W.2d 408 (Tex.Civ.App.1935, writ ref'd); Humphrys v. Skelly Oil Co., 83 F.2d 989 (5th Cir. 1936). It is always a question of resolving the intention of the parties from the entire instrument. In looking to the place in this lease where we would expect to find the term stated, we find this very certain language: "Provided, that this lease shall not remain in force longer than fifty (50) years from this date . . ." With a plain and certain answer to the question of when the lease terminates, we cannot change that answer with words elsewhere in the lease not certainly directed to the same question. Moore v. Smith, 443 S.W.2d 552 (Tex. 1969); Cartwright v. Trueblood, 90 Tex. 535, 39 S.W. 930 (1897).

The judgments below, declaring and adjudging the lease to terminate finally on July 14, 1975, are affirmed.

GREENHILL, C.J., concurs and writes opinion.

GREENHILL, Chief Justice (concurring).

I do not agree with the holding of the court that Section 7 of the lease is simply an excuse clause and would not be applicable, as relevant here, even if there had been a *complete* shutdown of all operations [for a period of years, for example] by governmental orders.

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EXXON COMPANY, U.S.A.
Post Office Box 2180 • Houston, Texas 77001
Natural Gas Department

October 1, 1974

(RECEIVED OCTOBER 3, 1974)

Odessa Natural Corporation
P. O. Box 3908
Odessa, Texas 79760
Attention: Mr. J. W. Cole, Jr.
Gentlemen:

Exxon Company, U.S.A. (a division of Exxon Corporation) is soliciting proposals for the purchase of its share of natural gas produced from various lands and leases in the Sand Hills Field, Crane County, Texas. This production will be available to Exxon on July 14, 1975. A total of 1,482 producing wells are involved (1,395 oil wells and 87 gas wells). These wells produce into 68 separate tank batteries. Exxon's working interest is expected to range from 12.4% in 45,771 acres of land to 25.0% in 33,147 acres of land. The acreage is situated within the area outlined on the attached plat which also indicates the approximate location of the tank batteries into which the wells are produced.

The following terms should be taken into consideration in submitting your offer to purchase our interest in the gas production:

1. Term—The term would begin on the later of July 14, 1975, or the date of first delivery of gas. The shortest primary term permissible under the circumstances is desirable.

2. Delivery Point—Offers are solicited on the basis of alternate delivery points: (a) at each tank battery location (b) at the outlet of either or both of the Warren Petroleum Corporation gasoline plants in section 21, Block B-21 and in Section 25, Block B-25, and (c) at a point in the field located in the NW ¼ of Section 18, Block B-32.

3. Delivery Pressure—At pressures estimated at 25 psig for the casinghead gas and ranging from an estimated 100 psig to 500 psig for the gas well gas. If deliveries are made at the outlet of Warren's plants, the pressure would be 650 psig, and if at the field point the pressure would be negotiable.

4. Quality—If deliveries are made at the tank battery locations or at the field point the gas would be delivered in its natural state. If deliveries are made at the outlet of the Warren plants, the gas would be residue of pipeline quality.

[42]

Docket No. CP75——
EXHIBIT "E"
Page 2 of 3

5. Quantity—We do not warrant the performance of any well on the acreage in which Exxon owns an interest. We anticipate that the volume of gas production attributable to Exxon's interest on July 14, 1975 will amount to about 17 MMcf per day raw gas, or 14 MMcf per day plant residue, representing approx-

imately 14% of the total gas production from the leases. Commitment will be limited to the base of the Ellenburger Formation.

6. Price—The price would be determined not less than 30 days prior to the date deliveries are to commence and at least annually thereafter on some mutually acceptable basis. The contract should also provide for stated minimum prices and fixed annual escalations.

Please advise within fifteen days after your receipt of this letter whether you desire to submit a proposal to purchase Exxon's interest in this gas production. If so, we will be pleased to provide such additional information as is available to us and not considered to be of a confidential nature to assist in your evaluation. Exxon reserves the right to reject any and all offers or proposals within its sole and absolute discretion. This letter is not (and is not to be construed as) an offer to sell gas. Acceptance of any offer or proposal would be subject to the condition that the parties agree upon the definitive terms of a comprehensive gas sale and purchase agreement.

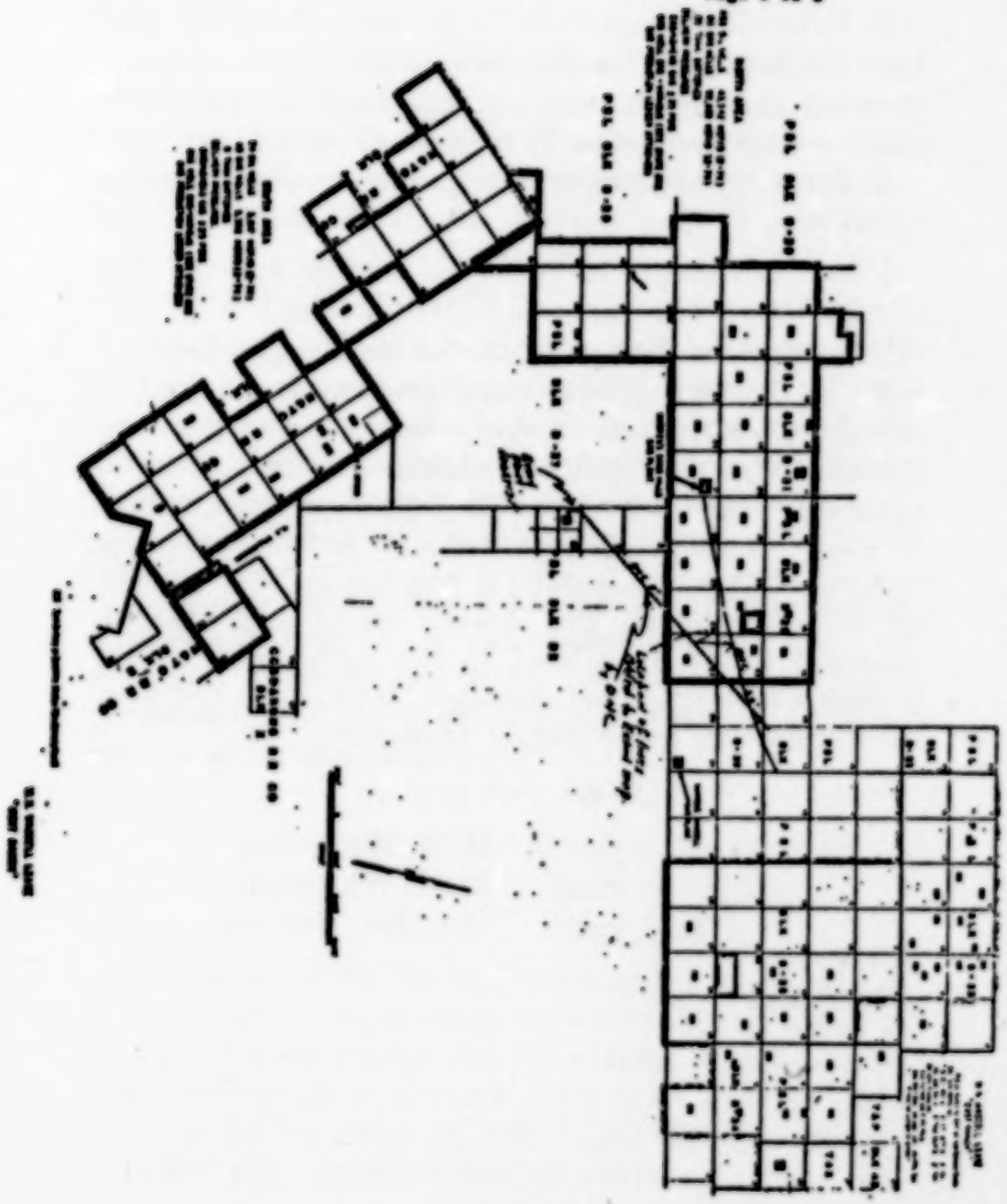
Yours very truly,

/s/ M. G. WHITCOMB
M. G. Whitcomb
Manager, Gas Sales

MGW/js
Attachment

[43]

Docket No. CP75-___
Exhibit "E"
Page 3 of 3



[44]

Docket No. CP75——
EXHIBIT "F"
Page 1 of 3

SOUTHLAND ROYALTY COMPANY

1600 First National Building
Fort Worth, Texas 76102

November 18, 1974

(RECEIVED NOVEMBER 19, 1974)

Mr. J. W. Cole, Jr.
Odessa Natural Gas Corporation
Box 3908
Odessa, Texas 79760

Subject: Gas Sales
Waddell Ranch
Crane County, Texas

Dear Mr. Cole:

You have previously expressed an interest in purchasing all or a portion of Southland's Waddell Ranch gas in Crane County, Texas.

For your information, we enclose average casinghead gas and gas well gas analyses and raw gas volume data furnished us by Warren Petroleum Company.

Southland Royalty Company, the Warren Wright Estate and the Penn interests collectively own approximately 80 percent of the term lease gas and are considering the sale of this gas at one of the three following points of delivery:

1. At the inlets of the Warren Sand Hills and Waddell gasoline plants. Under these conditions the gas will be sour and wet and at the respective plant inlet pressures.

2. At a point or points after the H_2S has been removed but before any liquifiable hydrocarbons have been extracted.

3. At the outlet of existing or new processing facilities. Under this condition the residue gas will be of conventional pipeline quality.

Southland will act as the representative of the Warren Wright and Penn interests in the initial gas sales negotiations and will, on behalf of this group, seek the optimum benefit from the disposition of the gas and liquids to be produced from the Waddell properties.

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Docket No. CP75——
EXHIBIT "F"
Page 2 of 3

Representing Southland in any negotiations will be Mr. I. Jon Brumley, President, Mr. C. Weston Roodhouse, Senior Vice President, and Mr. Roy T. Durst, Consultant. Either Mr. Roodhouse or Mr. Durst may be contacted at any time for additional information.

We would appreciate your advising us immediately if you desire to discuss with us the possible purchase of the Waddell gas. The expected date of first delivery is July 15, 1975.

Yours very truly,

SOUTHLAND ROYALTY COMPANY
/s/ I. Jon BRUMLEY
I. Jon Brumley, President

IJB/lhl
enc.

cc: Mr. John Penson
Mr. Harry Orr
Mr. C. W. Roodhouse
Mr. Roy T. Durst

[46]

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EXHIBIT "F"
Page 3 of 3

WADDELL RANCH GAS DATA

Listed below are gas analyses furnished Southland Royalty Company by Warren Petroleum Company. These data are reported as representative of the gas composition over a full year of operation and may therefore not be identical to spot samples taken from time to time.

	Casinghead Gas			Gas well Gas		
Content	Mol %	GPM		Mol %	GPM	
N_2	1.430			1.270		
CO_2	1.380			1.550		
H_2S	2.310			0.900		
C_1	73.536			85.350		
C_2	10.980	2.929		6.720	1.793	
C_3	6.050	1.661		2.710	0.744	
i-C_4	0.730	0.238)	0.857	0.300	0.098)	0.309
n-C_4	1.970	0.619)		0.670	0.211)	
i-C_5	0.540	0.197)		0.153	0.056)	
n-C_5	0.554	0.200)	0.625	0.152	0.055)	0.210
C_6	0.326	0.134)		0.132	0.054)	
C_7	0.194	0.094)		0.093	0.045)	
	100.000	6.072		100.000	3.056	

The following volumes were reported to be the actual metered volumes for the seven months ending July 31, 1974.

	MCFD		
	Total Gas Waddell-Sand Hills Systems	Term Lease Gas	Term % of Total
Total Casinghead Gas	116,113	62,691	53.99
Total Gaswell Gas	132,423	91,549	69.13
Total	248,536	154,240	

[47]

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EXHIBIT "G"
Page 1 of 1

October 10, 1974

Exxon Company, U.S.A.
P. O. Box 2180
Houston, Texas 77001

Attention: Mr. M. G. Whitcomb, Jr.

Gentlemen:

It has come to our attention that Exxon is soliciting proposals for the purchase of its share of natural gas produced from various lands and leases in the Sand Hills Field, Crane County, Texas.

This letter is for the purpose of putting you on notice that El Paso is cognizant of your proposal and has undertaken a review of the source of such gas and its current disposition, and, to the extent such gas is currently or has been received by El Paso into its interstate pipeline system, either by virtue of El Paso's purchases off your Sand Hills Plant or off Warren's Waddell Plant or any other plant from which El Paso purchases gas, El Paso shall consider what position it shall desire to take, if any, in order that its interests can be preserved.

Very truly yours,

/s/ R. E. JOHNSON
R. E. Johnson

cc: (w/Attachs.) Mr. R. F. Lemon
Reservoir Engineering

[48]

Docket No. CP75——
EXHIBIT "H"
Page 1 of 1

October 10, 1974

Southland Royalty Company
1600 First National Building
Fort Worth, Texas 76102

Attention: Mr. J. R. Burnett

Gentlemen:

It has come to our attention that Exxon is currently soliciting proposals for the purchase of its share of natural gas produced from various lands and leases (W. N. Waddell Leases) in Crane County, Texas.

We are not sure whether or not you have embarked on a similar solicitation, but we thought we ought to make you aware of the contents of our letter furnished Exxon this date, copy attached, and that the contents thereof would equally apply to your share of such gas.

Very truly yours,

/s/ R. E. JOHNSON
R. E. Johnson

Attachment

REJ:ck

cc: Mr. R. F. Lemon
Reservoir Engineering

[49]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(January 30, 1975)

Notice of Petition for a Declaratory Order

Take notice that on January 20, 1975, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP75-209 pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure a petition for a declaratory order resolving certain questions and removing certain uncertainties in connection with the expiration of a 50-year fixed term lease currently held by Gulf Oil Corporation which will expire on July 14, 1975.

The petition states that on July 14, 1925, Gulf Production Company, the corporate predecessor of Gulf Oil Corporation (Gulf), as lessee, executed a 50-year fixed term oil and gas lease with W. N. Waddell, *et al.*, lessors. It is stated that by the terms of said 50-year fixed term lease, Gulf obtained the exclusive right of exploiting 45,771 acres of land in Crane County, Texas, and producing oil and gas therefrom, and that the leasehold estate expires fifty years after date of execution, which is July 14, 1975, whereupon the mineral rights, including the rights to natural gas production, shall revert to the reversionary mineral interest owners.

The petition further states that Gulf and other leasehold interest owners of said 50-year fixed term lease

make percentage-type sales to Warren Petroleum Corporation (Warren), a division of Gulf, of certain quantities of casinghead gas produced from the acreage covered by the said 50-year fixed term lease. On January 26, 1951, El Paso, as buyer, and Gulf, as seller, executed a residue gas purchase agreement by which El Paso agreed to buy surplus residue gas from Gulf's natural gasoline extraction plant in Crane County, Texas, called the Waddell Gasoline Plant. On March 1, 1972, El Paso and Warren entered into an additional residue gas purchase agreement concerning certain quantities of residue gas from the Waddell Gasoline Plant. El Paso states that pursuant to these gas purchase [50] contracts, El Paso takes delivery of approximately 60,000 Mcf daily of surplus residue gas into its pipeline system at the outlet at the Waddell Gasoline Plant and transports it through its jurisdictional facilities for subsequent resale in interstate commerce. El Paso further states that it is informed by Warren that approximately 25,000 Mcf daily of such surplus residue gas is attributable to production from wells on land leased by Gulf and other leasehold interest owners to El Paso pursuant to the said 50-year fixed term lease.

The petition indicates that El Paso has become aware that the reversionary interest owners[1] are soliciting proposals from intrastate gas transmission companies for the purchase of their shares of natural

[1] El Paso states that Southland Royalty Comapny, soliciting on behalf of the estate of Warren Wright and the Penn interests, collectively represents 80 percent of the term lease gas, and that Exxon's interest represents 14 percent of the term lease gas.

gas produced after July 14, 1975, from the acreage covered by said 50-year fixed term lease.

Therefore, El Paso is petitioning the Commission for a declaratory order resolving the following questions: (i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Warren and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease? (ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce? (iii) Given the facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

[51] Any person desiring to be heard or to make any protest with reference to said petition should, on or

before February 19, 1975, file with the Federal Power Commission, Washington, D.C., 20426, a petition to intervene, or a protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB
Secretary

[52] EL PASO NATURAL GAS COMPANY
EL PASO, TEXAS 79978

JANUARY 30, 1975

(FEBRUARY 3, 1975)

Federal Power Commission
825 North Capitol Street
Washington, D.C. 20426

Attention: Mr. Kenneth F. Plumb, Secretary

Re: El Paso Natural Gas Company;
Docket No. CP75-209

Gentlemen:

On January 20, 1975, El Paso Natural Gas Company ("El Paso") filed with the Commission a Petition of El Paso Natural Gas Company for Issuance of a Declaratory Order at Docket No. CP75-209. El Paso wishes to make the following corrections in said Petition:

1) Page 1, line 31 which reads "ral Gas Act in order to cease such sales to El Paso and" should read "ral Gas Act in order to cease such sales to Warren Petroleum Corporation, who subsequently resells such gas to El Paso, and".

2) Page 4, line 16 which reads "reversionary mineral interest owners, Exxon, *et al.*, on July 14, 1974." should read "reversionary mineral interest owners, Exxon, *et al.*, on July 14, 1975."

3) Page 8, line 1 which reads "the production of which will revert to Exxon, *et al.* on July 14,

1974," should read "the production of which will will revert to Exxon, *et al.* on July 14, 1975,".

4) Page 8, line 24 which reads "Act in order to cease such sales to El Paso and ef-" should read "Act in order to cease such sales to Warren Petroleum Corporation, who subsequently resells such gas to El Paso, and ef-".

[53] A copy of this letter has been served on all persons who were served a copy of said Petition and upon all intervenors in the captioned proceeding.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

/s/ By ARTHUR R. FORMANEK, JR.
Arthur R. Formanek, Jr.
One of Counsel

G. Scott Cuming
Senior Vice President and General Counsel
Harris S. Wood
Arthur R. Formanek, Jr.
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas 79978

C. Frank Reifsnyder
Hogan & Hartson
815 Connecticut Avenue
Washington, D.C. 20006

Counsel for

EL PASO NATURAL GAS COMPANY

[54] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

IN THE MATTER OF

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Petition of Southern California Gas Company for Permission to Intervene

SOUTHERN CALIFORNIA GAS COMPANY (SoCal), pursuant to the provisions of the Natural Gas Act, as amended, and the Rules of Practice and Procedure of this Commission, requests that it be authorized and permitted to intervene and become a party to the above-entitled proceeding. All correspondence or communications in connection with this petition should be addressed to the following:

Thomas D. Clarke
Attorney at Law
P. O. Box 54790, Terminal Annex
Los Angeles, California 90054
(213) 689-2256

John H. Kreft, Manager of Federal
Regulatory Coordination
Southern California Gas Company
P. O. Box 3249, Terminal Annex
Los Angeles, California 90051
(213) 689-3667

I.

SoCal is a corporation organized and existing under the laws of the State of California. It purchases, distributes, and sells natural gas in the central and southern portions of the State of California. Its principal office is located at 810 South Flower Street, Los Angeles, California 90017.

SoCal has approximately 3.3 million customers and provides natural gas service to a population of approximately 10.8 million in the central and southern parts of the [55] State of California. It is the largest purchaser of natural gas from El Paso Natural Gas Company (El Paso). During the twelve months ended June 30, 1974, it received 611.0 billion cubic feet of its total natural gas supply from El Paso at the California-Arizona boundary.

II.

On January 20, 1975, El Paso Gas Company (El Paso) filed a petition for a declaratory order to resolve certain questions in connection with the expiration of a 50-year fixed term lease currently held by Gulf Oil Corporation (Gulf) which will expire on July 14, 1975.

El Paso states that on July 14, 1925, Gulf Production Company, the corporate predecessor of Gulf, as lessee, executed a 50-year fixed term oil and gas lease with W. N. Waddell, *et al.*, lessors. Pursuant to that lease, Gulf obtained the exclusive right of exploiting 45,771 acres of land in Crane County, Texas, and producing oil and gas therefrom, and that the leasehold estate expires fifty years after date of execution, which is July 14, 1975, whereupon the mineral rights, including the rights to natural gas production, shall revert to the reversionary mineral interest owners.

El Paso states that it purchases approximately 60,000 Mcf daily of surplus residue gas from Gulf Oil Corporation and from Warren Petroleum Corporation (Warren), a division of Gulf, as residue gas from Gulf's Waddell Gasoline Plant, and that approximately 25,000 Mcf daily of this residue gas is attributable to production from wells covered by the aforementioned 50-year fixed term lease.

El Paso states that it has become aware that the reversionary interest owners are soliciting proposals from intrastate gas transmission companies for the purchase of their shares of natural gas produced after the expiration of the 50-year fixed term lease.

El Paso seeks a declaratory order determining whether Gulf or other lessees may discontinue their sales of gas to Warren for resale upon termination of the lease without prior abandonment authority from the Commission. El Paso also seeks resolution of the questions of whether or not Warren may reduce its sales to El Paso without prior Commission authority and whether the reversionary interest holders may divert gas attribu .ble to their interests to other buyers without prior Commission authority.

[56] III.

In view of the foregoing, SoCal, as the largest purchaser of natural gas from El Paso, has an interest in this proceeding which cannot be adequately represented by existing parties. Under the circ stances, SoCal alleges that its participation will be in the public interest and that, accordingly, it should be granted full rights of intervention.

WHEREFORE, SoCal requests that an order be issued by the Commission authorizing it to intervene and participate in this proceeding with the full rights of a party thereto in order to protect its interests and the interests of the gas consumers in southern California which it serves.

Respectfully submitted,

SOUTHERN CALIFORNIA GAS COMPANY

/s/ By JEFFREY A. MEITH
Jeffrey A. Meith
Attorney

P.O. Box 54790, Terminal Annex
Los Angeles, California 90054

February 5, 1975

[57] [VERIFICATION OMITTED IN PRINTING]

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

[58] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(RECEIVED FEBRUARY 10, 1975)

Petition of Mobil Oil Corporation for Leave to Intervene

Mobil Oil Corporation (Mobil), pursuant to Section 15(a) of the Natural Gas Act, Section 1.8 of the Federal Power Commission's (Commission) Rules of Practice and Procedure, and the "Notice of Petition for a Declaratory Order" issued by the Commission on January 30, 1975, hereby petitions for leave to intervene and to be made a formal party in the above-captioned proceeding. In support of this Petition, Mobil shows:

I.

Mobil is a New York corporation with its principal place of business for natural gas at Three Greenway Plaza East, Suite 800, Houston, Texas 77046.

The names, titles, and mailing address of persons to whom correspondence or communications concerning this Petition are to be addressed are:

Tom P. Hamill
Robert D. Haworth
Robert E. Shaw
Mobil Oil Corporation
Three Greenway Plaza East
Suite 800
Houston, Texas 77046

II.

The Commission's Notice of January 30, 1975, in this docket states that El Paso Natural Gas Company (El Paso) requests a declaratory order resolving certain questions and removing certain uncertainties in connection with the expiration of a 50-year fixed term lease currently held by Gulf Oil Corporation (Gulf) which will expire on July 14, 1975.

[59] The petition further states that Gulf and other leasehold interest owners of said 50-year fixed term lease make percentage-type sales to Warren Petroleum Corporation (Warren), a division of Gulf, of certain quantities of casinghead gas produced from the acreage covered by the said 50-year fixed term lease. On January 26, 1951, El Paso, as buyer, and Gulf, as seller, executed a residue gas purchase agreement by which El Paso agreed to buy surplus residue gas from Gulf's natural gasoline extraction plant in Crane County, Texas, called the Waddell Gasoline Plant. On March 1, 1972, El Paso and Warren entered into an additional residue gas purchase agreement concerning certain quantities of residue gas from the Waddell Gasoline Plant. El Paso states that pursuant to these gas purchase contracts, El Paso takes delivery of approximately 60,000 Mcf daily of surplus residue gas into its pipeline system at the outlet at the Waddell Gasoline Plant and transports it through its jurisdictional facilities for subsequent resale in interstate commerce. El Paso further states that it is informed by Warren that approximately 25,000 Mcf daily of such surplus residue gas is attributable to production from wells on land leased by Gulf and other leasehold inter-

est owners to El Paso pursuant to the said 50-year fixed term lease.

Mobil owns a reversionary interest under a similar lease in the area involved.

III.

Mobil is engaged in the exploration, development, processing, and sale of petroleum, natural gas and liquid hydrocarbons in numerous locations in and outside of the United States. Mobil is also a substantial purchaser and consumer of natural gas. Further, Mobil owns a reversionary interest under a lease similar to that shown by El Paso. Because of its interest in sales and purchases of natural gas, Mobil has immediate, direct interests in any Commission action determining abandonment requirements, certification, jurisdiction, policy, precedent, rules, regulations, orders or criteria affecting the issuance of the declaratory order requested by El Paso under the Natural Gas Act. Such Commission action, including any review of prices or rates, also can directly affect operations in which Mobil and its subsidiaries are presently engaged or may in the future be engaged.

In view of its own interest in this docket and in natural gas [60] as to the issues in this docket, Mobil's interest is not, and cannot be, adequately represented by any existing parties. Mobil's intervention also is in the public interest, necessary and appropriate in the administration of the Natural Gas Act, and beneficial to formulation and development of policies and procedures concerning the production, sale, purchase and consumption of natural gas.

WHEREFORE, Mobil prays that it be granted leave to intervene in this proceeding and granted all rights of a party under the Rules and the Natural Gas Act, including the right to participate in conferences and hearings, to present evidence, and to cross-examine witnesses, to file briefs, to present argument, and otherwise to participate fully.

Respectfully submitted,

MOBIL OIL CORPORATION

Tom P. Hamill
Robert D. Haworth
Robert E. Shaw

/s/ By ROBERT D. HAWORTH
Robert D. Haworth
Its Attorney

February 7, 1975

[61] (VERIFICATION OMITTED IN PRINTING)

• • • • • • • • • • •

[62] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

• • • • • • • • • • •

[63-64] (NOT USED)

• • • • • • • • • • •

[65] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(RECEIVED FEBRUARY 9, 1975)

Petition of Southwest Gas Corporation for Leave to Intervene

Pursuant to Section 15(a) of the Natural Gas Act ("Act") and Section 1.8 of the Rules of Practice and Procedure of the Federal Power Commission ("Commission"), Southwest Gas Corporation ("Petitioner") herewith files its Petition For Leave To Intervene in the subject proceedings before the Commission, and in support thereof respectfully states:

I.

The names, titles, and mailing addresses of persons to whom correspondence and communications concerning this Petition To Intervene should be mailed are:

C. H. McCrea, General Counsel
Executive Vice President
Southwest Gas Corporation
P. O. Box 1450
Las Vegas, Nevada 89101

Robert L. Muirhead
Vice President
Southwest Gas Corporation
P. O. Box 1450
Las Vegas, Nevada 89101

II.

Petitioner is a corporation organized and existing under the laws of the State of California, having its principal place of business in Las Vegas, Nevada. Petitioner is engaged as a natural gas company and public utility in the transmission, distribution, and sale of natural gas in certain portions of the states of Arizona, California, and Nevada pursuant to certificates of public convenience and necessity heretofore issued by the Commission, the Arizona Corporation Commission, the California Public Utilities Commission, and the Public [66] Service Commission of Nevada, respectively.

Petitioner's operations are conducted through an organizational structure consisting of an Arizona Division, a California Division, a Southern Nevada Division, and a Northern Nevada Division. Petitioner's facilities and operations in its Arizona, California, and Southern Nevada Division have been granted exemptions under Section 1(c) of the Act, as amended, pursuant to Orders of the Commission as follows:

Service Area	*Docket Number*
Arizona	G-10511
San Bernardino	G-9693
Southern Nevada	CP 63-176

Petitioner's facilities and operations in its Northern Nevada Division are in part subject to the jurisdiction of the Commission, as well as to the jurisdiction of the Public Service Commission of Nevada, and the California Public Utilities Commission.

III.

As a part of its Arizona Division operations, Petitioner is engaged in the distribution and sale of natural gas to its distribution customers in the Arizona counties of Gila, Greenlee, and Pinal. As a part of its Southern Nevada Division operations, Petitioner is engaged in the transmission, distribution, and sale of natural gas to its distribution customers in Clark County, Nevada, and Mohave County, Arizona, and to its resale customer distributing natural gas in Clark County, Nevada. In meeting the natural gas requirements of the aforesaid customers, which include the resale requirements of California-Pacific Utilities Company, Petitioner is wholly dependent upon El Paso Natural Gas Company ("El Paso") as its sole source of supply for firm natural gas service.

Petitioner therefore has a direct and substantial interest in any proceeding before the Commission which involves or may affect the supply of gas and the cost of gas to Petitioner. The instant proceedings are of such a nature.

IV.

The instant proceeding is a petition by El Paso Natural Gas Company for a declaratory order resolving certain questions in connection with the expiration on July 14, 1975 of a 50-year fixed term lease currently held by Gulf Oil Corporation.

V.

In view of the facts and circumstances hereinabove noted, Petitioner and its customers have a direct and

substantial interest in the conduct and disposition of the instant [67] proceedings. Petitioner believes that its interest and that of its customers is not fully and adequately represented by the existing parties of record, and believes that Petitioner's interest and that of its customers can be fully represented only by the actual participation of Petitioner itself. Petitioner believes that its intervention is necessary and appropriate to the administration of the Act, as amended, and further believes that it is in the public interest that Petitioner be permitted to intervene in the instant proceeding to advance its interest and that of its customers as it may appear.

In the event the Commission deems it necessary to conduct formal hearings and/or settlement conferences, or any other procedures which may be appropriate to a definitive disposition of the instant proceeding, Petitioner herein requests the opportunity to participate fully therein in its capacity as a party of record and petitioning intervenor herein. Petitioner believes that its interest and that of its customers in such proceedings can be fully represented only by the actual participation of Petitioner itself.

WHEREFORE, Petitioner respectfully requests that it be authorized to intervene and participate fully as a party of record in the hearings and/or proceedings hereinafter conducted in Docket No. CP75-209.

Dated this 12 day of February, 1975.

SOUTHWEST GAS CORPORATION

/s/ By C. H. McCREA
C. H. McCrea
Executive Vice President

[68] (VERIFICATION OMITTED IN PRINTING)

. . . . . .

[69] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

. . . . . .

[70] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(RECEIVED FEBRUARY 18, 1975)

Notice of Intervention of the People of the State of California and the Public Utilities Commission of the State of California

The People of the State of California and the Public Utilities Commission of the State of California (California) hereby give notice of their intervention in the captioned proceeding pursuant to Section 15(a) of the Natural Gas Act and Sections 1.8(a)(1) and 1.37(f) of the Federal Power Commission's Rules of Practice and Procedure.

Dated at San Francisco, California, this 13th day of February, 1975.

Respectfully submitted,

/s/ RICHARD D. GRAVELLE
Richard D. Gravelle

/s/ J. CALVIN SIMPSON
J. Calvin Simpson

/s/ RUFUS G. THAYER, JR.
Rufus G. Thayer, Jr.

5066 State Building
San Francisco, California 94102

Attorneys for the
People of the State of California
and the Public Utilities Commission
of the State of California

[71] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

• • • • • • • • • •

[72] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Petition of Exxon Corporation for Leave to Intervene

Exxon Corporation (Exxon) pursuant to Section 15(a) of the Natural Gas Act, as amended, and Section 1.8 of the Commission's Rules of Practice and Procedure, respectfully requests permission to file its intervention in and become a party to the captioned proceeding. In support of its petition, Exxon states:

I.

Exxon is a corporation organized under the laws of the State of New Jersey, having its principal office and place of business at 1251 Avenue of the Americas, New York, New York 10020.

The names and address of persons to whom correspondence and communications concerning this petition are to be addressed are as follows:

Martin N. Erck
Paul W. Wright
Douglas E. Mock
P.O. Box 2180
Houston, Texas 77001

II.

On January 30, 1975, the Federal Power Commission (Commission) issued in the captioned docket its Notice

of Petition for a Declaratory Order. The Commission's Notice relates to the January 20, 1975 filing by El Paso Natural Gas Company (El Paso) of a Petition for Issuance of a Declaratory Order. Said petition asked the Commission to resolve three specific questions in connection with the July 14, 1975 expiration of a 50-year fixed term oil and gas lease currently held by Gulf Oil Corporation.

The three questions for which El Paso seeks the Declaratory Order are as follows:

[73] 1. Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Warren and effectuate the Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease?

2. Given the facts set forth in (1), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from

its present movement in interstate commerce to delivery and sale in intrastate commerce?

3. Given the facts set forth in (1), without prior Commission authorization, may Warren Petroleum Corporation reduce it sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

Exxon is one of the owners of the reversionary interest rights to the oil, gas and other minerals covered by the 50-year fixed term lease currently held by Gulf Oil Corporation and to which El Paso's Petition for the Issuance of a Declaratory Order refers.[1] On July 14, 1975, the expiration date of the 50-year lease, the mineral rights, including the rights to natural gas [74] production will revert to the reversionary mineral interest owners. It is Exxon's position that, from and after July 14, 1975, Exxon will be free to sell and deliver its working interest gas to the purchaser or purchasers of its choice.[2]

Because of the foregoing, Exxon will or may be directly affected by the action taken, the findings made, the conclusions reached, and procedures established in the captioned proceeding. Exxon's interest is not, and

[1] Exxon's interest in the referenced properties is approximately 14 percent, considerably less than that of two of the other mineral interest owners, in spite of the fact that such mineral interest owners collectively have been designated by El Paso as "Exxon *et al*".

[2] *El Paso Natural Gas Company* v. *Perry R. Bass*, 48 F.P.C. 1269 (1972)

cannot be, adequately represented by any other party and its intervention is in the public interest and is necessary and appropriate to the administration of the Natural Gas Act.

WHEREFORE, Exxon respectively prays that it be granted leave to intervene in the captioned proceeding with the right to fully participate in the hearings, present evidence, cross-examine witnesses, file briefs, and be considered a party to this proceeding for all purposes.

Respectfully submitted,

Martin N. Erck
Paul W. Wright
Douglas E. Mock

Attorneys for
Exxon Corporation

/s/ By PAUL W. WRIGHT
Paul W. Wright

Dated in Houston this 14th day of February, 1975.

[75] (VERIFICATION OMITTED IN PRINTING)

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[75] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[76] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

**Petition of Texaco Inc.
for Leave to Intervene**

Texaco Inc. (Texaco), pursuant to Section 1.8 of the Commission's Rules of Practice and Procedure, here by requests that it be allowed to intervene in the above-referenced proceeding. In support of this petition, Texaco respectfully represents the following:

I.

Communications with respect hereto should be addressed to the following:

E. E. Galloway, General Manager
Texaco Inc.
P. O. Box 52332
Houston, Texas 77052

and

Kirk W. Weinert, Attorney
Texaco Inc.
P. O. Box 52332
Houston, Texas 77052

II.

On January 20, 1975, El Paso Natural Gas Company (El Paso) filed in the above-referenced docket, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, a petition for a declaratory order to resolve issues arising [77] as a result of the

impending expiration on July 14, 1975, of a 50-year fixed term lease in Crane County, Texas, currently held by Gulf Oil Corporation (Gulf). The petition indicates that upon expiration of this lease (W. N. Waddell, *et al.*, lessors) the mineral rights shall revert to the reversionary mineral interest owners. Casinghead gas from the above-mentioned property is delivered to Gulf's Waddell Gasoline Plant, and residue gas therefrom is sold to El Paso.

El Paso has indicated that the reversionary interest owners are soliciting proposals from intrastate gas transmission companies for the purchase of their natural gas produced after expiration of the above-mentioned lease. One of the issues raised by El Paso is whether abandonment authorization must be obtained from the Commission in order for the reversionary interest owners to sell their gas to intrastate purchasers upon expiration of the lease.

III.

Texaco is a producer and seller in interstate commerce of substantial volumes of natural gas in Texas and other states. Furthermore, Texaco is one of the reversionary interest owners of property in Ector County, Texas, which property is currently covered by another 50-year fixed term Gulf lease. Therefore, Texaco has an interest that would appear to be directly affected by the outcome of the instant proceeding. Texaco's interest in this proceeding cannot be adequately represented by any other party.

It is Texaco's preliminary view that the Commission's jurisdiction does not extend to the reversionary interests involved in this proceeding; therefore, this

petition for leave to intervene should in no way be construed as acquiescence in the Commission's jurisdiction over the subject matter.

WHEREFORE, Texaco respectfully requests that it be allowed to intervene in these proceedings. Although no request for a hearing is made in this petition, in the event that the matter is set for formal hearing, Texaco requests that it be given the right to participate therein, with the full rights [78] of a party, including, but not limited to the right to present evidence, cross-examine witnesses and participate in written and oral argument before the Commission.

Respectfully submitted,

TEXACO INC.

Kirk W. Weinert
C. Fielding Early, Jr.
Roger L. Brandt

By /s/ C. Fielding Early, Jr.
C. Fielding Early, Jr.

Houston, Texas
February 13, 1975

[79] (AFFIDAVIT OMITTED IN PRINTING)

. . . . . .

[80] EL PASO NATURAL GAS COMPANY
EL PASO, TEXAS 79978

February 21, 1975

(FILED FEBRUARY 24, 1975)

Federal Power Commission
825 North Capitol Street
Washington, D.C. 20426

Attention: Mr. Kenneth F. Plumb, Secretary

Re: El Paso Natural Gas Company;
Docket No. CP75-209

Gentlemen:

On January 20, 1975, El Paso Natural Gas Company ("El Paso") filed with the Commission a Petition of El Paso Natural Gas Company for Issuance of a Declaratory Order at Docket No. CP75-209. At page 6 of said Petition, El Paso stated its belief that, after the expiration of a certain 50-year fixed term lease presently owned by Gulf, *et al.* on July 14, 1975, Southland Royalty Company ("Southland") and other reversionary interest owners intend to sell their shares of natural gas only to intrastate of gas, thereby diverting said gas from its present movement in interstate commerce.

As a supplement to such statements in said Petition, enclosed are articles from *The Wall Street Journal,* February 13, 1975, page 20, and *The Oil Daily,* February 13, 1975, page 1, which indicate that Southland has in fact concluded arrangements for the sale of its share of natural gas in question to an intrastate buyer of gas, Intratex, at a base price of $1.90 per million British

thermal units (Btu), plus fixed increases of 2.5 cents per million Btu on January 1, 1976, and at the end of each six months thereafter.

A copy of this letter with enclosures has been served on all persons who were served a copy of said Petition and upon all intervenors in the captioned proceeding.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

/s/ By ARTHUR R. FORMANEK, JR.
Arthur R. Formanek, Jr.
One of Counsel

Enclosures

[81] El Paso Natural Gas Company
Docket No. CP75-209

20 THE WALL STREET JOURNAL, Thursday, Feb. 13, 1975

SOUTHLAND ROYALTY TO SELL GAS TO UNIT OF HOUSTON NATURAL

By a WALL STREET JOURNAL *Staff Reporter*

FORT WORTH, Texas—Southland Royalty Co. said it agreed to sell Intratex Gas Co. all natural gas to be produced from its interests in the Waddell Ranch properties, Crane County, Texas.

Intratex, a subsidiary of Houston Natural Gas Corp., will resell the gas within Texas.

The gas purchase contract covers a 20-year term, beginning with the expiration of the present leases on the properties July 14. The contract is subject to renegotiation at the election of Southland at the end of the 10th year.

The base price to be paid by Intratex is $1.90 per million British thermal units, plus fixed increases of 2.5 cents per million BTU on Jan. 1, 1976, and each six months thereafter. Southland has the right to cause the price to be redetermined as of July 14, as of Jan. 1, 1976, and at the end of each six months thereafter.

A British thermal units is the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.

Southland said that, based on production and reserve data, it will be produced from its Waddell interests in the 12 months beginning July 14. It stressed,

however, that this is only an estimate and that actual production would be subject to "many unforeseen factors."

Southland also cautioned that the value of the contract to Southland is dependent upon various contingencies.

For instance, Southland said, it and Intratex believe that, upon expiration of the Waddell leases, Southland is free to sell all of its gas to any pipeline. El Paso Natural Gas Co., the present purchaser of some of the Waddell Gas, has petitioned the Federal Power Commission questioning that position. El Paso Gas is a unit of El Paso Co.

Southland also said that, although it is trying to make suitable provisions for processing the gas to be sold to Intratex, those negotiations haven't been concluded.

Southland said it has reserved sufficient gas far various types of operations by it in the vicinity of the Waddell Ranch, and, subject to maintaining certain specifications of the gas to be sold, has also reserved the right to extract and keep liquefiable hydrocarbons.

The existing royalty provisions of the Waddell leases restrict Southland's revenue from both gas-well and casing head gas, which, combined, contributed about $80,000 in 1974 in gas revenue from the Waddell properties, the company said.

Southland receives from gas-well gas only its proportionate share of $200 per well per year, regardless of production. On casing head gas, Southland receives its share of 1/8 of production, but revenue is limited to four cents per thousand cubic feet.

[82] El Paso Natural Gas Company
Docket No. CP75-209

THE OIL DAILY

© Daily Newspaper of the Energy Industries

NUMBER 5,830 Thursday, February 13, 1975

Waddell Area Gas Sold for $1.90

Houston—Southland Royalty Co. will sell gas to a subsidiary of Houston Natural Gas Corp. for $1.90 per million Btu plus later escalations. The price is one of the highest yet paid in the southwest.

Gas would come from Southland's interests in the Waddell Ranch properties, Crane County, Texas. Deliveries to Intratex Gas Co. would begin at the expiration of a 50-year Gulf Oil Lease on the Waddell area, whose mineral interests revert to Southland at that time. The gas purchase contract with Intratex is dated Feb. 7, 1975, and will be effective for 20 years. The subsidiary will start receiving Waddell gas July 14.

[83] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of

Docket No. CP75-209

El Paso Natural Gas Company

Petition of Mitchell Energy Corporation for Leave to Intervene

Mitchell Energy Corporation, ("Mitchell") pursuant to Section 15(a) of the Natural Gas Act ("Act"), Section 1.8 of the Federal Power Commission ("Commission") Rules of Practice and Procedure, and the "Notice of Petition for a Declaratory Order" issued by the Commission on January 30, 1975, as amended by Notice of Extension of Time issued on February 12, 1975, respectfully submits this Petition for leave to intervene in the above captioned docket. In support of its Petition, Mitchell respectfully shows:

I.

Mitchell is a Texas corporation with its principal place of business in Houston, Texas. Petitioner is a natural gas company as defined in the Natural Gas Act, 15 U.S.C. Section 717a, and owns and operates natural gas production facilities in the states of Texas, Louisiana and Oklahoma.

The parties responsible for the preparation of this Petition and to whom all communications with respect thereto should be directed are:

Homer J. Penn, Esquire
John E. Watson, Esquire
Mitchell Energy Corporation
3900 One Shell Plaza
Houston, Texas 77002

Frank P. Saponaro, Jr.
Morgan, Lewis & Bockius
1140 Connecticut Ave., N.W.
Washington, D. C. 20036

[84] II.

The Commission's Notice of January 30, 1975, in this docket states that El Paso Natural Gas Company (El Paso) requests a declaratory order resolving certain questions and removing certain uncertainties in connection with the expiration of a 50-year fixed term lease currently held by Gulf Oil Corporation (Gulf) which will expire on July 14, 1975. The petition further states that Gulf and other leasehold interest owners of said 50-year fixed term lease make percentage-type sales to Warren Petroleum Corporation (Warren), a division of Gulf, of certain quantities of casinghead gas produced from the acreage covered by the said 50-year fixed term lease. On January 26, 1951, El Paso, as buyer, and Gulf, as seller, executed a residue gas purchase agreement by which El Paso agreed to buy surplus residue gas from Gulf's natural gasoline extraction plant in Crane County, Texas, called the Waddell Gasoline Plant. On March 1, 1972, El Paso and Warren entered into an additional residue gas purchase agreement concerning certain quantities of residue gas from the Waddell Gasoline Plant. El Paso states that pursuant to these gas purchase con-

tracts, El Paso take delivery of approximately 60,000 Mcf daily of surplus residue gas into its pipeline system at the outlet at the Waddell Gasoline Plant and transports it through its jurisdictional facilities for subsequently resale in interstate commerce. El Paso further states that it is informed by Warren that approximately 25,000 Mcf daily of such surplus residue gas is attributable to production from wells on land leased by Gulf and other leasehold interest owners to El Paso pursuant to the said 50-year fixed term lease.

III.

Mitchell submits that the issues presented in this case are similar in nature to those raised in Mitchell Energy Corporation CI75-296. Because of this similarity of issues and Mitchell's interest in sales and purchases of natural gas, [85] Mitchell has immediate direct interests in any Commission action determining abandonment requirements, certification, jurisdiction, policy, precedent, rules, regulations, orders or criteria affecting the issuance of the declaratory order requested by El Paso under the Natural Gas Tct. Such Commission action, including any review of prices or rates, also can directly affect operations in which Mitchell and its subsidiaries are presently engaged or may in the future be engaged.

In view of its own interest in this docket and in natural gas as to the issues in this docket, Mitchell's interest is not, and cannot be, adequately represented by any existing parties. Mitchell's intervention also is in the public interest, necessary and appropriate in the administration of the National Gas Act, and bene-

ficial to formulation and development of policies and procedures concerning the production, sale, purchase and consumption of natural gas.

WHEREFORE, Mitchell prays that it be granted leave to intervene in this proceeding and granted all rights of a party under the Rules and the Natural Gas Act, including the right to participate in conferences and hearings, to present evidence, and to cross-examine witnesses, to file briefs, to present argument, and otherwise to participate fully.

Respectfully submitted,

MITCHELL ENERGY CORPORATION

Homer J. Penn
John E. Watson

/s/ By FRANK P. SAPONARO, JR.
Frank P. Saponaro, Jr.
Its Attorney

February 20, 1975

[86] (AFFIDAVIT OMITTED IN PRINTING)

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[87] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[88] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(Received February 28, 1975)

Petition of Pacific Gas and Electric Company to Intervene

Pacific Gas and Electric Company (PGandE), pursuant to the provisions of the Natural Gas Act, as amended, and to the Commission's Rules of Practice and Procedure, hereby petitions for leave to intervene in the above proceeding, and represents as follows:

I

PGandE's principal office is located at 77 Beale Street, San Francisco, California. All communications regarding this matter should be addressed to the following persons:

Malcolm H. Furbush, Associate General Counsel
Daniel E. Gibson, Senior Counsel
Donald L. Freitas, Attorney
Pacific Gas and Electric Company
77 Beale Street, Room 3120
San Francisco, California 94106
Telephone: (415) 781-4211

II

PGandE is incorporated under the laws of the State of California and is a regulated public utility

under the California Public Utilities Code. PGandE distributes gas and electricity throughout large portions of northern and central California. Its service area includes a population of approximately 8.5 million people, and 2.6 million gas customers in 37 counties take service from PGandE.

[89] III

PGandE presently depends upon three different sources for its natural gas supply: producers in California gas fields (approximately 18 percent), Pacific Gas Transmission Company which delivers gas originating in the province of Alberta, Canada (approximately 45 percent), and El Paso Natural Gas Company (El Paso) which delivers gas from fields in Texas and New Mexico (approximately 37 percent). PGandE's purchases of natural gas from El Paso make it El Paso's second largest customer.

In this proceeding El Paso Natural Gas Company has filed a petition for a declaratory order to resolve certain questions in connection with the expiration of a 50-year fixed term lease currently held by Gulf Oil Corporation (Gulf) which will expire on July 14, 1975.

Pursuant to the terms of the aforementioned lease, Gulf obtained exclusive rights for a fixed term of fifty years to mineral rights for the production of oil and gas from certain acreage located in Crane County, Texas. Upon the expiration of the 50-year period, the mineral rights are to revert to the reversionary mineral interest owners.

El Paso states that it purchases approximately 25,000 Mcf per day of surplus residue gas from Gulf

and Warren Petroleum Corporation (Warren) that is attributable to production from wells covered by the aforementioned lease.

El Paso seeks a declaratory order herein determining whether Gulf or other lessees may discontinue their sales of gas to Warren for resale upon termination of the lease without prior abandonment authority from this Commission. El Paso also seeks resolution of the questions of whether or not Warren may reduce its sales to El Paso without prior Commission authority and whether the reversionary interest holders may divert gas attributable to their interests to other buyers without prior Commission authority.

V

The Commission's eventual disposition of this proceeding will have an effect upon the quantity and price of natural gas available to El Paso which in turn will directly affect the supply and price of gas available to PGandE and its customers. Therefore, PGandE has direct and substantial interest in this proceeding, which interests are not represented by any other party. PGandE, therefore, desires to intervene in this proceeding in order to protect its interests and the interests of the gas consumers it serves in Northern and Central California.

[90] WHEREFORE, Pacific Gas and Electric Company requests that it be permitted to intervene and participate in any hearings in these proceedings with the full rights of parties thereto in order to protect

its interests and the interests of the gas consumers in northern and central California whom it serves.

Respectfully submitted,

MALCOLM H. FURBUSH
DANIEL E. GIBSON
DONALD L. FREITAS

/s/ By DANIEL E. GIBSON
Daniel E. Gibson
Attorneys for Pacific Gas

February 26, 1975

[91] (VERIFICATION OMITTED IN PRINTING)

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[92] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[93] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(Filed March 3, 1975)

Answer of Exxon Corporation to Petition for Issuance of a Declaratory Order and Request for Briefing Schedule

Exxon Corporation (Exxon), pursuant to Section 1.9(a) of the Commission's Rules of Practice and Procedure and the Commission's Order in these proceedings dated January 30, 1975, hereby responds to the January 20, 1975, "Petition of El Paso Natural Gas Company for Issuance of a Declaratory Order." Exxon denies that either it or the other fee owners is required to obtain abandonment authority under Section 7(b) in connection with the expiration of the 50-year fixed term oil and gas lease with Gulf Oil Corporation (Gulf) referred to in El Paso Natural Gas Company's (El Paso) petition. Exxon also denies that either Gulf or Warren Petroleum Corporation (Warren) is required to obtain abandonment authority in connection with the expiration of the oil and gas lease. Exxon requests that the briefing schedule, hereinafter described, be set with regard to the substantial Constitutional and other legal issues presented by El Paso's petition. In support whereof Exxon shows as follows:

I

In its petition, El Paso seeks a declaratory order regarding the expiration of a 50-year fixed term oil and gas lease between Exxon and the other fee owners and Gulf. Under the lease, Gulf obtained the right for a fixed term of 50 year to exploit certain mineral rights underlying certain properties in Crane County, Texas. Subject to the lease, Gulf developed, *inter alia*, natural gas production and contracted to sell such production to El Paso. On July 14, 1975, the 50-year fixed term oil and gas lease expires by its own terms and Gulf's [94] leasehold estate in the mineral rights is extinguished.[1] El Paso questions whether Gulf, Exxon, and Warren all have to obtain Commission abandonment authority upon the expiration of the lease. As a result, El Paso would argue that the gas which it has been receiving from Gulf must continue to be delivered to it beyond the lease term.

The thrust of El Paso's argument would be that it, in some manner, acquired a right to purchase that which Gulf had no right to sell. But, the leasehold estate under which Gulf developed natural gas production is for a term of 50 years. Beyond this 50-year term, Gulf has no right to dispose of the production. Thus, the gas sales contract under which Gulf agreed to sell production to El Paso is subject to the infirmity that Gulf could not sell such production

[1] The expiration of the lease on July 14, 1975, has been conclusively determined by the Supreme Court of Texas in Gulf Oil Corporation v. Southland Royalty, 496 S.W. 2d 547 (1973).

beyond the 50-year term of the lease. Nor could Gulf bind Exxon to a sale of gas to El Paso. Under such circumstances, Exxon's full enjoyment of its fee interest at the end of the lease term is free of any encumbrance is favor of El Paso. And, Exxon has not contracted to sell its gas to El Paso at the end of the lease term. Thus, for the Commission to direct, as El Paso would argue, that Exxon be required to deliver involuntarily its gas to El Paso after expiration of the lease would deprive Exxon of its property without due process of law in violation of the Fifth Amendment to the Constitution.

A. *Gulf is not Required to Obtain Abandonment Authority.*

We turn now to the three specific questions which El Paso raises in its petition. First, El Paso questions whether Gulf requires abandonment authority to transfer its mineral interests to Exxon at the expiration of the lease term. At the outset, it must be noted that there is no transfer of mineral interests at the end of the lease term. On July 14, 1975, Gulf's leasehold estate simply expires. Thus, there is no "transfer" of rights for the Commission to approve.

The necessity for abandonment authority under almost identical circumstances has already been considered by the Commission and decided in the negative in *El Paso Natural Gas Company* v. *Perry R. Bass*, 48 F.P.C. 1269 (1972). In that case, El Paso had been purchasing the full wellstream in a particular [95] well from Shell. This included the working interest

of Shell and the overriding royalty interest of Bass and the royalty interest of the original lessor. When Perry R. Bass exercised his back-in working interest, El Paso questioned whether Shell required abandonment authority before Bass could sell his working interest gas to a pipeline company other than El Paso. The Comission held that no abandonment authority was required because El Paso's rights to purchase such gas were no greater than Shell's right to sell it. Since Bass, in his agreement with Shell, had expressly precluded Shell from disposing of Bass' working interest in the gas production, Shell could not have sold Bass' gas to El Paso and El Paso could not have purchased it. Thus, the Commission found that its power to require abandonment authorization is limited to the gas which the producer has the right to sell.

Here, Gulf, like Shell, obtained its right to exploit certain oil and gas rights through a lease from Exxon for a fixed term of 50 years. Gulf was not granted any authority by Exxon with regard to production beyond the 50-year fixed lease term. Thus, Gulf had no right under the lease to commit production to El Paso beyond the 50-year term of its leasehold estate, and the contractual right of El Paso to purchase production from said leasehold its extinguished with the expiration of Gulf's lease. Since Exxon neither was a party to Gulf's contract with El Paso nor has contracted to sell its interests in the production to El Paso upon the expiration of the lease, there is no service to be provided to El Paso beyond the lease term to which the Commission's abandonment authority would be applicable.

B. *The Fee Owners are not Required to Obtain Abandonment Authority.*

Secondly, El Paso questions whether Exxon and the other fee owners require abandonment authority in order to dispose of their interests in the gas at the end of the lease term to others than El Paso. This question was also considered and rejected by the Commission in the *Bass* Opinion. There, the Commission found that in connection with its back-in working interest Bass neither owner nor operated any facilities subject to the jurisdiction of the Commission. The Commission also found that Bass made no sale for resale in interstate commerce and thus rendered no service to the interstate market prior to the exercise of its back-in working interest. Since abandonment jurisdiction under Section 7(b) extends only to jurisdictional facilities and service, the Commission concluded that no abandonment authority could be required.

[96] Here, the situation is the same. Exxon, like Bass, neither owns nor operates any facilities in connection with the existing transaction which are subject to the Commission's jurisdiction. Likewise, Exxon makes no sale for resale in interstate commerce. Thus, as in *Bass*, Exxon has no facilities and renders no service to which the Commission's abandonment authority may be applied.

In addition, the Commission noted in *Bass* that both at the time of the execution by Shell of its contract with El Paso and the time of the issuance of a certificate for such contract, Bass was a royalty owner over which it had no jurisdiction, citing *Mobil*

Oil Corp. v. *FPC*, 463 F.2d 256 (D.C. Cir. 1971), cert. denied, 406 U.S. 976 (1972). Thus, the Commission found that Bass, as a royalty owner, was among a class of persons which the courts have decreed are outside of its jurisdiction.

Here, the situation is again the same. Like Bass, Exxon was a royalty owner at the time of the execution and certification of the Gulf contracts with El Paso. Thus, as a royalty owner Exxon is among that class of persons which the courts have decreed to be outside of the Commission's jurisdiction.

Finally, Exxon would not become subject to the Commission's jurisdiction at the termination of Gulf's leasehold estate. In *Bass*, the Commission found that it could require abandonment authority only if it could hold that Bass automatically became bound by Shell's certificate and contract with El Paso. The Commission expressly concluded that it had "no basis in law" to reach such a result, particularly since under the Act one who proposes to become an interstate seller is entitled to accept or reject its certification without compulsion to render service.

Here, as in *Bass*, there is no basis in law or fact for the Commission to find that Exxon will become automatically bound by Gulf's certificates or contracts with El Paso upon the expiration of the 50-year fixed term lease. Gulf has no authority whatsoever under its lease to dispose of Exxon's fee interests after termination of the lease or to commit Exxon to any specific disposition. And, Exxon has not contracted to sell the production from its fee interest to El Paso. Thus, to hold that Exxon, as fee

owner, somehow automatically would be bound involuntarily to deliver its production to El Paso would deprive Exxon of its property without due process of law in violation of the Fifth Amendment to the Constitution. Such Constitutional principle underlies the Commission's recognition in *Bass* that a prospective in- [97] terstate seller is entitled to accept or reject its certificate without compulsion to render service.

....

C. *Warren is not Required to Obtain Abandonment Authority.*

The third and last question in El Paso's petition is whether Warren requires abandonment authority to reduce its residue gas sale to El Paso, the present level of which is attributable in part to production from the lease. This question is disposed of by the answer to El Paso's first question. Since Gulf does not require any abandonment authority at the termination of its lease, Warren does not require any abandonment authority with regard to the residue gas attributable to production from such lease. In fact it is apparent from El Paso's question that Warren will continue to sell residue gas to El Paso from its plant.

II

As may be seen, El Paso's petition presents substantial legal questions. Significant among them is the Constitutional issue regarding the potential deprivation of property in violation of Exxon's Fifth Amendment rights. Such issues clearly require a more intensive analysis than has been permitted by the

time alloted for this answer. Consequently, in the absence of any material issue of fact, Exxon requests that the following briefing schedule be adopted:

> Simultaneous initial briefs by all parties, including the Commission Staff, due to be filed on or before thirty days after the Commission acts upon this request.
>
> Simultaneous reply briefs by all parties, including the Commission Staff, due to be filed on or before twenty days after the filing of initial briefs.

III

WHEREFORE, Exxon answers in the negative the three questions posed by El Paso in its petition for declaratory [98] order and requests that the Commission adopt the briefing schedule set forth above.

Respectfully submitted,

EXXON CORPORATION

MARTIN N. ERCK
PAUL W. WRIGHT
EXXON CORPORATION
P. O. Box 2180
Houston, Texas 77001

SHERMAN S. POLAND
BERNARD A. FOSTER, III
Ross, Marsh & Foster
730-15th Street, N.W.
Washington, D. C. 20005

/s/ By BERNARD A. FOSTER, III
Bernard A. Foster, III

Dated at Washington, D. C.,
this 3rd day of March, 1975.

[99] (AFFIDAVIT OMITTED IN PRINTING)

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[100-101] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[102] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(RECEIVED MARCH 7, 1975)

Petition to Intervene and Answer of Mineral Interest Owners To Petition for Declaratory Order

Pursuant to Section 1.8 and Section 1.9 of the Commission's Rules of Practice and Procedure, Mineral Interest Owners [1] hereby file this petition to intervene and answer to the petition for declaratory order filed in the captioned proceeding by El Paso Natural Gas Company (El Paso) pursuant to Section 1.7(c) of the Rules of Practice and Procedure.[2]

[103] 1.

Summary of Position of Mineral Interest Owners

The "controversy or uncertainty" [3] which is the

[1] The Mineral Interest Owners on whose behalf this petition to intervene and answer is filed are listed on Exhibit A hereto at p. 22.

[2] Section 1.7(c) of the Commission's Rules of Practice and Procedure states:

"(c) *For declaratory orders* .Petitions for the issuance, in the discretion of the Commission, of a declaratory order to terminate a controversy or remove uncertainty, shall state clearly and concisely the controversy or uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with the full disclosure of petitioner's interest, and shall conform to the requirements of §§ 1.15 and 1.16."

[3] Contrary to the requirement of Section 1.7(c), El Paso does

subject of El Paso's petition arises from the termination on July 14, 1975 of the 50-year fixed-term oil and gas lease held by Gulf Oil Corporation (Gulf) on the approximately 46,000 acres in Crane County, Texas, referred to in El Paso's petition. The gas attributable to Gulf's fixed-term leasehold estate is sold to El Paso at the tailgate of the Waddell Gasoline Plant which is operated by Warren Petroleum Company (Warren), a division of Gulf Oil Corporation.[4] Under established principles of Texas oil and gas law, Gulf will be the sole owner and seller of this gas production until its leasehold estate terminates on July 14, 1975. Upon termination of Gulf's leasehold estate on July 14, 1975, Mineral Interest Owners will hold fee simply title to their pro rata share of the mineral estate underlying the subject acreage.[5] *Gulf Oil Corp.* v. [104] *Southland Royalty Co.*, 496 S.W. 2d 547, 522 (Tex. Sup. Ct. 1973). In other words, upon termination of the lease on July 14, 1975, Gulf will have no right, title or interest in any gas

not state "clearly and concisely the controversy or uncertainty" which is the subject of its petition. Instead, El Paso requests the Commission to resolve three complex questions which are framed in a manner clearly prejudicial to Mineral Interest Owners and contrary to the legal relationship between the parties. At no point does El Paso take a position on how these questions should be resolved by the Commission. However, its "suggestions" and the manner in which it has framed the questions to be decided leave no doubt as to the result El Paso seeks.

[4] According to El Paso, such sales represent approximately 42% of the gas being sold to El Paso at this point of delivery (Pet. 5).

[5] The respective percentage owned by each Mineral Interest Owner in the mineral estate covered by this lease is also shown on Exhibit A hereto.

produced from and attributable to the fee simple mineral estate of Mineral Interest Owners and will have sold to El Paso all of the gas to which Gulf was entitled under the lease. Thereafter, Gulf will continue to sell to El Paso all of the gas which it could have dedicated and did dedicate under its contracts with El Paso and all of the gas covered by the certificates which the Commission has issued with respect to such sales to El Paso.

Mineral Interest Owners have agreed to sell to Intratex Gas Company [6] (Intratex) the gas attributable to the fee simple mineral estate they will hold on July 14, 1975 following the termination of Gulf's leasehold estate. According to El Paso, this sale to Intratex will result in a "diversion" of sales of surplus residue gas from interstate commerce to intrastate commerce.[7] El Paso "questions" whether such diversion should take place without prior clarification of three questions by the Commission. When these three questions are stripped of the verbal camouflage superimposed by El Paso, the dispositive question boils down to whether Mineral Interest Owners must obtain Section 7(b) abandonment authorization be-

[6] Southland Royalty Company has entered into a contract to sell its interest in the gas to Intratex, an intrastate buyer of gas, which is a wholly owned subsidiary of Houston Natural Gas Corporation, a distributor of gas in the City of Houston, Texas, and environs. The other Mineral Interest Owners have entered or in the near future will enter into similar contracts with Intratex.

[7] As detailed herein, the "diversion" alleged by El Paso is illusory because Mineral Interest Owners are not now making, nor have they made in the past, any sales of gas attributable to their mineral estate. Of course, in order to have a "diversion" of gas sales, there must be some existing sale from which the gas is diverted.

fore initiating sales to the purchaser of their choice (Intratex).

[105] For the reasons set forth herein, Mineral Interest Owners submit that the Commission should issue an order permitting Mineral Interest Owners to intervene in this proceeding as parties for all purposes, and find and declare that such Mineral Interest Owners are not required to obtain any prior Commission authorization in order to commence sales to Intratex of gas attributable to the mineral estate they will hold on termination of Gulf's lease on July 14, 1975. Any different result would be in irreconcilable conflict with the D. C. Circuit's decision in *Mobil Oil Corp.* v. *F.P.C.*,[8] would require the Commission to overrule its decision in *El Paso Natural Gas Co.* v. *Perry R. Bass*,[9] and would contravene the decision of the Supreme Court of Texas in *Gulf Oil Corp.* v. *Southland Royalty Co., supra.*

El Paso's petition presents strictly legal issues. Therefore, these legal issues can and should be decided by the Commission without hearing.[10] In view of the proximity of July 14, 1975, it is clearly in the public interest that the Commission issue its decision in this case as soon as possible. Mineral Interest Owners believe that the Commission can render a decision on the legal issues raised by El Paso based on the pleadings and documents attached thereto and on file with the Commission. However, in the event the Commission

[8] 463 F.2d 256 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 976 (1972).

[9] Opinion No. 638, 48 F.P.C. 1269 (1972).

[10] El Paso's petition does not request a hearing.

should deem it desirable to permit the parties to file briefs in support of their positions, Mineral Interest Owners would suggest that simultaneous initial briefs be filed not later than March 31, 1975 and simultaneous reply briefs not later than April 14, 1975 or such earlier dates as the Commission should deem [106] appropriate in light of the obvious need for an early decision in this case.[11]

2.

Factual Background

As noted above, Mineral Interest Owners are the owners of the reversionary mineral estate underlying approximately 43,000 acres in Crane County, Texas. This mineral estate is presently subject to a 50-year fixed-term oil and gas lease[12] dated July 14, 1925, as

[11] In the event the Commission should direct the parties to file briefs, Mineral Interest Owners request that the Commission specify the issues to which such briefs should be directed. As pointed out in footnote 3, *supra*, the questions which El Paso requests the Commission to resolve are not only unduly complicated, but are framed in a manner clearly prejudicial to Mineral Interest Owners and contrary to the factual and legal situation.

[12] Such term oil and gas leases now are extremely rate, in fact almost unique. As early as 1928, it was recognized that fixed-term leases had "long been in disuse" and were "of no practical importance" in Texas. Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas*, 7 Tex.L.Rev.1, 15 (1928). *See also* 3 Williams, Oil & Gas Law § 601.1; Brown, Law of Oil and Gas Leases § 5.01. Virtually all modern oil and gas leases provide for the leasehold estate to remain in effect as long as either oil or gas is produced in paying quantities. 2 Kuntz. Law of Oil & Gas § 26.1 at 244; 1A Summers, Law of Oil & Gas § 153 at 381.

amended March 16, [107] 1926,[13] between W. N. Waddell, et al (predecessors of Mineral Interest Owners), as Lessors, and Gulf Production Company (predecessor of Gulf), as Lessee.[14]

Mineral Interest Owners' only present interest in the casinghead gas being produced by Gulf from the lease is a royalty of 1/8th of 4¢ per Mcf for all casinghead gas produced and sold from said lease. Under this royalty provision, Mineral Interest Owners have no right to take gas in kind or to receive a royalty based on the price received by the lessee for the gas.[15] The lease specifically provides "that this lease shall not remain in force longer than 50 years from" the date thereof.[16] Any doubt as to the date of termination was removed in *Gulf Oil Corp.* v. *Southland Royalty Co., supra,*[17] where the Supreme Court of Texas held:

[13] Copies of this 50-year fixed-term oil and gas lease and amendment are attached to El Paso's petition as Exhibits A and B respectively. As noted in El Paso's petition (p. 3, fn. 1), this lease and amendment were recorded in the Deed Records of Crane County, Texas, thus putting parties such as El Paso on constructive notice of the terms and conditions of the lease, including the fact that it terminates on July 14, 1975. Tex. Rev. Civ. Stat. Ann. § 6646.

[14] El Paso's petition (p. 1) refers to six other lessees in addition to Gulf. However, it should be noted that each of these six other lessees obtained its interest as a result of an assignment of a small portion of Gulf's 50-year fixed-term lease and, therefore, took such leasehold interest subject to the same terms and conditions as Gulf. For simplicity, all current lessees will be referred to herein as "Gulf."

[15] Section 2 of the lease.

[16] Section 1, Paragraph 2 of the lease.

[17] A copy of this decison is attached to El Paso's petition as Exhibit D.

[108] "The duration of the estate granted is traditionally determined by the habendum clause. 2 Summers, The Law of Oil and Gas, Perm.Ed. § 303.1, p. 319. This need not be the case, for the instrument may provide elsewhere for the enlargement of the term stated in the habendum. *See* Standard Oil & Gas Co. v. Christian, 83 S.W.2d 408 (Tex.Civ.App.1935, writ ref'd); Humphrys v. Skelly Oil Co., 83 F.2d 989 (5th Cir. 1936). It is always a question of resolving the intention of the parties from the entire instrument. In looking to the place in this lease where we would expect to find the term stated, we find this very certain language 'Provided, that this lease shall not remain in force longer than fifty (50) years from this date . . .' With a plain and certain answer to the question of when the lease terminates, we cannot change that answer with words elsewhere in the lease not certainly directed to the same question. Moore v. Smith, 443 S.W.2d 552 (Tex. 1969); Cartwright v. Trueblood, 90 Tex. 535, 39 S.W. 930 (1897).

"The judgments below, declaring and adjudging the lease to terminate finally on July 14, 1975, are affirmed."

On January 26, 1951, Gulf executed a Residue Gas Purchase Agreement [18] (1951 Agreement) with El Paso under which Gulf agreed to sell and El Paso to purchase Gulf's "surplus residue gas" at the tailgate of Gulf's Waddell Gasoline Plant in Crane County, Texas.

[18] This contract is on file with the Commission as part of Warren's FPC Gas Rate Schedule No. 43.

As defined in Article I of the 1951 Agreement, the volumes of "surplus residue gas" to be sold were limited to volumes remaining after Gulf processed the gas in the Waddell plant, met all of its obligations under the terms of its oil and gas leases in the area, satisfied its fuel requirements for its drilling and plant operations, and met its obligations under an existing gas sales agreement.[19] Following [109] the *Phillips* decision,[20] Gulf received a certificate by order issued May 26, 1956 in Docket No. G-7156 authorizing this sale of "surplus residue gas" to El Paso.

On March 1, 1972, El Paso and Warren [21] entered into an additional Residue Gas Purchase Agreement (1972 Agreement) [22] covering additional volumes of surplus residue gas attributable to newly executed contracts between producers and Warren and renewals or extensions of existing contracts between producers and Warren. By order issued July 22, 1974 in Docket CI72-760, the Commission authorized the sale of additional surplus residue gas under the 1972 Agreement. Neither the 1951 Agreement nor the 1972 Agreement purports to cover any gas attributable to the mineral estate of Mineral Interest Owners.

[19] 1951 Agreement, Article I(d).

[20] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[21] Following its acquisition of Warren Petroleum Corporation in 1957, Gulf conveyed its interest in the Waddell Plant, the gathering system associated therewith, and the 1951 Agreement to Warren. On December 31, 1971, Warren was merged into Gulf and now operates as a division of Gulf.

[22] This contract is on file with the Commission as a part of Warren's FPC Gas Rate Schedule No. 66.

As stated in its petition, El Paso takes delivery of the surplus residue gas which Warren has available at the tailgate of the Waddell Gasoline Plant and transports such gas through its jurisdictional facilities for ultimate consumption in interstate commerce. According to El Paso's petition, approximately 25,000 Mcf per day of the 60,000 Mcf per day of surplus residue gas which El Paso purchases at the tailgate of the Waddell Plant reflects gas production attributable to Gulf's leasehold estate under the 50-year fixed-term lease.[23]

[110] As previously noted, upon termination of Gulf's leasehold estate on July 14, 1975, Mineral Interest Owners propose to sell to Intratex the gas attributable to the fee simple mineral estate they will own upon termination of Gulf's leasehold estate.[24]

[23] In its petition, El Paso states (p. 5) that Southland, the Warren Wright Estate, and the Penn heirs (which comprise the Mineral Interest Owners) "collectively own 80% of the 50-year fixed-term lease gas and are considering its sale." Of course, these Mineral Interest Owners do not own any of the 50-year fixed-term lease gas since all such gas is attributable to Gulf's leasehold interest and is owned by Gulf. What Southland, the Warren Wright Estate, and the Penn heirs do own collectively is approximately 80% of the gas production which will be attributable to the fee simple mineral interests of all of the Mineral Interest Owners upon expiration of Gulf's 50-year fixed-term lease.

[24] Mineral Interest Owners do not know what disposition any of the other mineral interest owners have or intend to make of their share of the gas upon termination of Gulf's leasehold estate.

3.

Mineral Interest Owners Are Not Required To Obtain Abandonment Authorization Under Section 7(b) Before Initiating Sales of Gas to Intratex

There is no merit to El Paso's suggestion that Mineral Interest Owners must secure abandonment authorization under Section 7(b) of the Natural Gas Act before exercising their rights as mineral estate owners to make sales in the intrastate market of gas attributable to the mineral estate they will hold on July 14, 1975. This suggestion rests wholly on the invalid assumption that volumes of gas attributable to the mineral estate of Mineral Interest Owners have somehow been dedicated to the interstate market. However, as shown below, no such dedication has occurred, and therefore, Section 7(b) clearly does not apply to Mineral Interest Owners under the undisputed facts before the Commission in this case.

[111] Preliminarily, Mineral Interest Owners agree with El Paso's statement (p. 7) that once dedicated to interstate commerce, gas reserves may not be removed from interstate commerce without abandonment authorization.[25] But this legal conclusion begs the question of whether gas attributable to the mineral estate of Mineral Interest Owners has been dedicated to interstate commerce. Likewise, El Paso's reliance on *California* v. *Lo Vaca Gathering Co.*, 379 U.S. 366 (1965), is misplaced because there has been no physical movement of any gas attributable to the mineral estate of Mineral Interest Owners. Indeed, since the right of

[25] *Sunray Mid-Continent Oil Co.*, 364 U.S. 137 (1960).

such Mineral Interest Owners to market any gas attributable to their mineral estate will not even come into being until July 14, 1975, no gas attributable to such mineral estate could have been previously delivered by Gulf and no dedication of such gas could have occurred.

The Natural Gas Act comprehends that before jurisdiction attaches there must be a voluntary dedication of service to the interstate market. Only when a producer *chooses to sell* gas in interstate commerce and *commences deliveries* does he make himself a natural gas company.[26] In short, the Commission has no authority under the Natural Gas Act to compel a producer to sell his gas in interstate commerce. And although the Commission has the authority under Section 7(e) of the Act to condition certificates which it issues, a producer may reject a conditioned certificate offered by the Commission.[27]

It is likewise clear that gas may only be dedicated to the interstate market to the extent that a seller has the [112] authority to dispose of the gas involved. For example, if under a particular lease the lessee has the right to explore and develop only a specified portion of the mineral estate, i.e., only to a particular depth, the lessee can only dedicate to interstate commerce those volumes of gas which he has the right to produce and develop. By making sales of gas produced from his

[26] *Argo Oil Corp.*, 15 F.P.C. 601, 618 (1955); *Pioneer Gathering System*, 23 F.P.C. 260, 263 (1960). Section 7(e) of the Act requires that before issuing a certificate the Commission must find the applicant "willing" to perform the service.

[27] *Atlantic Refining Co.* v. *Public Service Comm'n*, 360 U.S. 378, 387-88 (1959).

lease under a certificate issued by the Commission, the lessee does not and cannot dedicate to interstate commerce gas not covered by the lease.

Similarly, the fact that Mineral Interest Owners retain a royalty interest under Gulf's term lease does not make them "sellers" of gas in interstate commerce within the meaning of the Natural Gas Act[28] and in no way dedicates gas attributable to their mineral estate to the interstate market. On this point, the decision in *Mobil Oil Corp.* v. *F.P.C., supra,*[29] is dispositive. In that case the Commission had held that the royalty provision in an oil and gas lease created an economic interest in interstate sales of gas and constituted a sale of gas for resale in interstate commerce so that landowners holding such royalty interests were natural gas companies subject to the Natural Gas Act. In reversing the Commission's [113] decision,[30] the Court of Appeals found that under "an ordinary lease by the landowner to the producer, there is neither a 'customary' sale in interstate commerce nor its equivalent in economic

[28] As noted by Judge Brown in *J. M. Huber* v. *Denman*, 367 F.2d 104 (5th Cir. 1966):

> ". . . there can be no 'sale' of gas by royalty owners since they have no gas to sell. And this seems to be true as a matter of oil and gas law whether based on the ownership-in-place concept followed by Texas and others or in non-ownership theories of other jurisdictions. For all agree that as the gas leaves the well-mouth the entire ownership of the gas is in the lessee, none being reserved in the lessor."
> (367 F.2d at 113-4.)

[29] Any discussion of this controlling case is conspicuously absent from El Paso's petition.

[30] Opinion No. 562, 42 F.P.C. 164.

effect.'"[31] Noting that execution of a conventional lease precedes the sale of natural gas, the court further concluded that royalty interests are "too far removed from the interstate sale" and, therefore, outside the Commission's control.[32]

The holding in *Mobil* is particularly applicable in this case because the royalty provision in Gulf's fixed-term lease is not related to the market price at which the gas is sold, but to 1/8th of 4¢ per Mcf for all casinghead gas. Therefore, the royalty interests of Mineral Interest Owners do not include a percentage interest in the gas sold by the lessee. Thus, these royalty interests are even farther removed from any possible jurisdictional sale of gas than those involved in *Mobil* and clearly do not subject gas attributable to the mineral estate of Mineral Interest Owners to the Commission's jurisdiction.

As applied to the instant case, the foregoing basic principles require the conclusion that any gas that may be produced from the mineral estate following the expiration of Gulf's 50-year fixed-term lease has not been and could not have been dedicated to interstate commerce by Gulf. Under its lease, Gulf possessed only a 50-year leasehold right and had no legal authority to provide for disposition of any gas produced therefrom beyond the termination date of the lease.[33] [114] Consequently, Gulf could not dedicate to the interstate

[31] 463 F.2d at 262.

[32] *Id.* at 262-263.

[33] In *Mobil*, the court noted that a lease gives a lessee *"all possessory interests in gas produced during the life of the lease"* (463 F.2d at 260) (emphasis supplied).

market volumes attributable to the mineral estate of Mineral Interest Owners, which volumes will be produced only after Gulf's lease-hold estate terminates.[34]

Moreover, El Paso's suggestion that Mineral Interest Owners must obtain Section 7(b) abandonment authorization before initiating sales to Intratex is clearly contrary to the principles enunciated by the Commission in rejecting similar contentions in *El Paso Natural Gas Co.* v. *Perry R. Bass.*[35] In that case, Bass had entered into a farmout agreement with Shell Oil Company under which Bass retained an overriding royalty and an option to convert such royalty interest into a one-half working interest within 30 days after payout. Under the contract, Shell had no authority to sell any gas attributable to Bass' working interest. Beginning in 1961, Shell sold gas from the property to El Paso under a certificate issued by the Commission. After payout occurred in 1972, Bass elected to convert his overriding royalty interest to a working interest and contracted to sell the gas to another pipeline. El Paso filed a complaint and petition for declaratory order with the Commission asserting that Bass was required to obtain "abandonment authorization pursuant to Section 7(b) of the Natural Gas Act, . . . prior to the diversion of natural [115] gas by Bass from its present movement in interstate commerce to El Paso."[36]

[34] It does not appear that Gulf has ever attempted to dedicate to El Paso any of the volumes of gas attributable to the mineral estate of Mineral Interest Owners. In any event, even if Gulf had attempted to sell gas attributable to the mineral estate of Mineral Interest Owners, El Paso was charged with notice of the limitations of Gulf's power to contract. *See* footnote 13, *supra*.

[35] Opinion No. 638, 48 F.P.C. 1269 (1972).

[36] Complaint of El Paso Natural Gas Company and Petition for

The Commission found that Bass was not a "natural gas company" within the meaning of the Natural Gas Act because Bass had not previously sold or transported gas attributable to his interest under the lease, and had not authorized Shell to do so." Since Bass had made no sale in interstate commerce for resale, he had rendered no service to the interstate market and was not within the reach of Section 7(b)." In particular, the Commission stated:"

> "*The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell had no right to sell.* We will not so alter the basic property rights of mineral owners through the fiction of Section 7(b) application. *El Paso is charged with notice of the limitations on Shell's power to contract,* for such limitations preceded the Shell-El Paso Agreement by seven years and were express in the very instrument which marked Shells inception of title, the 1956 farmout agreement. We note that the Shell-El Paso gas contract did not purport to cover any gas save that [116] produced from 'the properties owned by Shell.' In law, Shell contemplated selling, and El

Issuance of a Declaratory Order, *El Paso Natural Gas Co.* v. *Perry R. Bass*, Docket No. RP73-45, filed September 26, 1972, at 1. *Compare* El Paso's request in the instant case for an order directing Mineral Interest Owners to secure Commission authorization before they can "divert natural gas from its present movement in interstate commerce . . ." (Petition at 1.)

[37] 48 F.P.C. at 1276.

[38] *Id.* at 1275-1276.

[39] *Id.* at 1276-1277.

Paso contemplated buying, Shell's gas. *Neither party can be heard to say that the gas contract can function to impair the pre-existing title of Bass, who was not a party to the gas contract and who could not have prevented its execution. El Paso's rights to purchase gas from the James Ranch Well can rise no higher than Shell's rights to sell that gas,* yet El Paso seeks that result by its claim that it is entitled to purchase Bass' gas until this Commission orders otherwise."

* * *

"At the time of the execution of the Shell-El Paso contract, and at the time of our certification of the sale and the facilities there provided for, *Bass was a royalty owner.* Bass so remained until the happening of the contingency-payout to Shell of its well costs—which triggered Bass' right to convert its royalty interest to a working interest. As a royalty owner, Bass was not a "seller" within the meaning of the Natural Gas Act and was not in any way subject to our jurisdiction. This is the express holding of *Mobil Oil Corp.* v. *F.P.C.*, 463 F.2d 256 (CADC-1971) cert. denied 406 U.S. 976 (1972), which overturned Opinion No. 562, 42 FPC 164. Section 7(b) operates only on "natural gas companies," that is, as defined in Section 2(6) of the Act, those who transport or sell for resale in interstate commerce. It follows, therefore, that Section 7(b) does not apply to Bass, since Bass is neither a seller or transporter at this time." (Emphasis supplied.)

The Commission's rationale in *Bass* is clearly applicable to this case. In both cases, the gravamen of El Paso's complaint has been substantively the same, i.e., that abandonment authorization under Section 7(b) was required prior to the "diversion" of natural gas from alleged present movement in [117] interstate commerce.[40] Likewise, in both cases, the thrust of El Paso's arguments has been that in some manner it acquired a right to purchase gas attributable to a mineral interest through dealings with an independent third party (Gulf) which had no right to sell such gas even though El Paso was on notice of the third party's limited rights.[41] Moreover, in the instant case, the mineral estate of the Mineral Interest Owners, unlike the option retained by Bass, has not been created from the lease under which the sales to El Paso are made. Since Mineral Interest Owners have no present or future interest in that lease, they are even further removed from the agreement with El Paso than was Bass. Thus, no conceivable basis exists for finding that gas from the mineral estate of Mineral Interest Owners has previously been dedicated to the interstate market, and as in *Bass* the Commission should find and declare that Mineral Interest Owners are not required to obtain abandonment authorization under Section 7(b) prior to commencing the sale of gas to Intratex.

El Paso futilely attempts to distinguish *Bass* on the grounds that (1) in *Bass,* the Commission did not consider whether a party in the position of Gulf must obtain abandonment authorization before the lessor may

[40] See footnote 36, *supra.*

[41] See footnote 13, *supra.*

"back in" to the working interest, and (2) in *Bass,* sales of gas were "diverted" from one interstate pipeline to another interstate pipeline while in this case the sale to Intratex will "divert" gas from the interstate to the intrastate market. Neither of these alleged distinctions undercuts in the slightest the controlling effect of the *Bass* decision on the issues raised by El Paso's petition. As detailed *infra* at pp. 17-20, there is absolutely no merit to El Paso's suggestion that Gulf must obtain abandonment authorization to "effectuate the transfer by reversion" to Mineral Interest Owners of their mineral estate upon termination of Gulf's 50-year fixed-term leasehold estate.[42]

[118] El Paso's "diversion" distinction likewise is meaningless because the holding in *Bass*—that a person who has not previously made or authorized a sale of gas in interstate commerce cannot be required to seek abandonment authorization—was clearly not based upon whether the purchaser to whom Bass sold his gas was an interstate or an intrastate pipeline. Moreover, despite El Paso's repeated assertions to the contrary, Mineral Interest Owners' sale of gas to Intratex will not divert gas from the interstate to the intrastate market. As previously noted, before any such "diversion" could occur, there must have been some prior dedication to the interstate market of the gas reserves attributable to the mineral estate of Mineral Interest Owners. But in light of *Bass* and *Mobil,* there has been no such dedication and therefore there will be no such diversion.

[42] We assume that El Paso's "back in" assertion is the same as its reference to "transfer by reversion."

4.

El Paso's Other Suggestions[43] Are Likewise Without Merit

El Paso suggests that Gulf must obtain abandonment authorization pursuant to Section 7(b) of the Act in order to "effectuate the transfer by reversion" to Mineral Interest Owners of the mineral estate which they will hold upon termination of Gulf's 50-year fixed-term lease on July 14, 1975. Undoubtedly El Paso is attempting to analogize the situation in this case to the situation where a lessee selling gas to an interstate pipeline voluntarily transfers his working interest to a third party who must obtain certification and continue the sale unless abandonment authorization is approved by the Commission. However, the Commission rejected a similar "suggestion" in *Bass* stating (48 F.P.C. at 1276):

[119] "The Commission recognizes the legal requirement that when an assignment of a lease occurs, the successor steps '* * * into the shoes of a predecessor [and] takes the properties * * * subject to any benefits and infirmities inherent therein'. *Graridge Corp., et al,* Opinion No. 408, 30 FPC 1156 at 1162. Shell took the James Ranch Lease subject to the infirmity that it could not sell Bass' gas, or bind Bass to a gas sales contract."

The same rationale applies in this case because Gulf-Warren could not sell the gas attributable to the min-

[43] As pointed out in footnote 3, *supra,* El Paso takes no position as to how the Commission should resolve the controversy which is the subject of El Paso's petition.

eral estate of Mineral Interest Owners or bind them to its gas sales contracts with El Paso.

Further, El Paso's "suggestion" is patently fallacious because upon termination of Gulf's leasehold estate on July 14, 1975, there will be nothing for Gulf to transfer to Mineral Interest Owners. It is an elementary rule of property law that for Gulf to "effectuate a transfer" Gulf must have a property right to convey. Upon expiration of the 50-year term lease, Gulf will have no right, title or interest in the minerals underlying that acreage and, therefore, will have no right which could be transferred or conveyed. This result necessarily follows from the fact than an oil and gas lease is a determinable fee which upon termination, for whatever reason, automatically vests the absolute fee simple title in the owner of the mineral estate less whatever minerals have been produced and marketed.[44] In this case Gulf's leasehold estate will simply cease to exist on July 14, 1975 at which time the fee simple title to the mineral estate will automatically vest in Mineral Interest Onwers. In light of the decision in *Gulf Oil Corp.* v. *Southland Royalty Co., supra,* Gulf could not prevent this vesting since it will have no residual legal interest in [120] the lease.[45] For the same reason, upon termination of its lease, Gulf will have no interest which it could transfer to Mineral Interest Owners. Thus, no "transfer by reversion" will take place over which

[44] *Duke* v. *Sun Oil Co.*, 320 F.2d 853, 858 (5th Cir. 1963).

[45] *See Haby* v. *Stanolind Oil & Gas Co.*, 228 F.2d 298, 305 (5th Cir. 1955), in which the court held the equitable rule against forfeiture could not be applied to a terminated lease since upon termination the lessee had no interest which could be forfeited.

the Commission could exercise its abandonment authority, even assuming that jurisdiction over such a transfer existed."[46]

El Paso also suggests that Warren may not reduce sales of residue gas to El Paso without prior Commission authorization."[47] The short answer to this "suggestion" is that although there will be a reduction in the actual volumes of residue gas delivered to El Paso after July 14, 1975, there will be no reduction in the volumes which Gulf-Warren contracted to sell to El Paso and which the Commission [121] certificated to be sold under such contracts."[48] As previously detailed, the contracts between Gulf-Warren and El Paso did not and could not include any volumes of gas attributable to the mineral estate of Mineral Interest Owners. Thus, there will be no reduction in the volumes of gas covered by the Gulf-Warren and El Paso contracts and the related certificates issued by the Commission and, therefore, it is clear

[46] Clearly the Commission has no jurisdiction under the Natural Gas Act to determine when or whether a mineral leasehold estate terminates. These are matters of state property law which are the exclusive concern of the courts. In this case, the Supreme Court of Texas has determined that Gulf's leasehold estate terminates on July 14, 1975. *Gulf Oil Corp.* v. *Southland Royalty Co., supra.* For the Commission to contravene this decision by holding that such lease did not terminate unless and until Gulf obtained Section 7(b) abandonment authorization would constitute an impermissible attempt to extent its authority to areas of purely local concern.

[47] El Paso does not cite the statutory authority for any such Commission authorization but presumably El Paso is referring to Section 7(b) abandonment authorization.

[48] In its petition, El Paso acknowledges that after July 14, 1975 Warren will continue to deliver to El Paso 35,000 Mcf per day of "surplus residue gas" in accordance with the subject contracts.

that Warren is not required to obtain any type of "prior Commission authorization"."[49]

Conclusion

For the foregoing reasons, Mineral Interest Owners respectfully request the Commission to issue an order without further hearing based upon the pleadings and documents on file with the Commission and, if the Commission should find necessary, on briefs to be filed by the parties, and in such order:

(a) permit Mineral Interest Owners to intervene in the captioned proceeding and to have all rights as a party thereto;

(b) grant El Paso's petition for declaratory order on the terms and conditions stated in the foregoing answer;

[122] (c) grant Mineral Interest Owners such other and further relief to which they may be entitled.

[49] The reason that Warren requires no "prior Commission authorization" to reflect the reduction in the actual volumes of gas delivered to El Paso on or after July 14, 1975 is analogous to the situation where there is a reduction in deliveries by an interstate seller due to the depletion of one or more wells on acreage covered by a certificated contract but deliveries of gas continue from the remaining wells.

Respectfully submitted,

/s/ J. Evans Attwell
J. Evans Attwell
Francis J. Coleman
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Attorneys for Mineral Interest Owners

March 3, 1976

[123] Exhibit A

MINERAL INTEREST OWNERS

Percentage Ownership of Mineral Estate
(Calculated on Acreage Basis)

	% Ownership
Southland Royalty Company	47.0
William Y. Penn, *et al,* Trustees	8.6
Trustees Under the Will of Warren Wright, Deceased	25.7
Total Mineral Interest Owners	81.3
Other Mineral Owners	18.7
TOTAL	100.00

[124] (Verification Omitted in Printing)

• • • • • • • • • • •

[125] (Certificate of Service Omitted in Printing)

• • • • • • • • • • •

[126] VINSON, ELKINS, SEARLS, CONNALLY & SMITH
ATTORNEYS AT LAW
1701 Pennsylvania Avenue, N.W.
Suite 1170
Washington, D. C. 20006
Tel.: AC 202 290-6550 Telex: 69050

March 5, 1975

Mr. Kenneth F. Plumb
Secretary
Federal Power Commission
825 N. Capitol Street, N. E.
Washington, D. C. 20426

Re: *El Paso Natural Gas Company,* Docket No. CP75-209

Dear Mr. Plumb:

On March 3, 1975, Mineral Interest Owners filed their petition to intervene and answer in the above-captioned proceeding. As a part thereof, there was included as Exhibit A a list of the parties comprising Mineral Interest Owners. Inadvertently, there was omitted from that exhibit certain persons on whose behalf such petition to intervene and answer was filed. Accordingly, I am enclosing herewith a revised copy of Exhibit A which sets forth in full those parties included within the group designated as Mineral Interest Owners.

In addition, I would point out an error in the first line of footnote 12 of the petition to intervene and answer filed by Mineral Interest Owners, *i.e.* the word "rate" should be changed to "rare." It would be

appreciated if the copies previously filed could be so corrected.

Copies of this letter and the attached revised Exhibit A are being served on all parties of record.

Yours very truly,

/s/ PLATT W. DAVIS III
Platt W. Davis III

[127] EXHIBIT A

Mineral Interest Owners

Percentage Ownership of Mineral Estate
(Calculated on Acreage Basis)

	% Ownership
Southland Royalty Company	47.0
William Y. Penn, *et al,* Trustees, Nancy Elizabeth Penson, Penn Resources, Inc., Elizabeth Hudson Penn	8.6
Trustees Under the Will of Warren Wright, Deceased	25.7
Total Mineral Interest Owners	81.3
Other Mineral Owners	18.7
TOTAL	100.00

[128] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Petition to Intervene and Response of Gulf Oil Corporation

Comes now Gulf Oil Corporation (Gulf) and files this its Petition to Intervene and Response in the above proceeding:

I.

MAILING ADDRESS

All correspondence and communications concerning this matter should be with:

Warren M. Sparks, Attorney
Gulf Oil Corporation
P. O. Box 1589
Tulsa, OK 74102

Gulf is a corporation organized under the laws of the State of Pennsylvania and authorized to do business in the State of Texas and elsewhere.

II.

PETITION TO INTERVENE

Gulf is one of the parties against whom El Paso Natural Gas Company's (El Paso) Petition For Issuance of a Declaratory Order is directed. Gulf is therefore an essential party to any action the Commission

may take in this proceeding. However, since the Commission in its Notice of a Petition for a Declaratory Order issued January 30, 1975, stated that any person wishing to participate as a party in the proceeding must file a Petition to Intervene, Gulf, [129] as a precaution, moves to intervene in this proceeding and to participate in all phases thereof, including the presentation of testimony and cross-examination of witnesses. The basis for Gulf's right to intervene is the obvious fact that it is one of the principal parties upon which El Paso's Petition, if granted, would operate and as such is a necessary and indispensable party to any action the Commission might take.

III.

Statement of Position

Stated simply, it is Gulf's position that the facts and circumstances of this case do not require it to obtain any abandonment authorization from the Commission.

IV.

No Sale From Warren to Gulf

El Paso's Petition asks the Commission to resolve three questions. Stripped of excess verbage the first question is ". . . must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, *who have been selling gas produced from said lease on a percentage-type basis to Warren Petroleum Corporation* for resale in interstate commerce, obtain abandonment authorization. . .?" (all emphasis added) This question is founded on apparent misapprehension of the facts. Gulf does not sell gas to Warren Petroleum

Corporation. There is no Warren Petroleum Corporation, only Warren Petroleum Company, a Division of Gulf Oil Corporation. A history of the situation may explain El Paso's confusion on this matter.

1. On January 26, 1951, El Paso entered into a contract with Gulf to purchase surplus residue gas available for sale from casinghead gas processed in Gulf's Waddell Plant in Crane County, Texas. A part of the gas processed was and is produced from Gulf's term leases described in El Paso's Petition. The Commission, by Order dated May 28, 1956, In The Matters of Howard W. Fleet, et al, issued a Certificate of Public Convenience and Necessity to Gulf in Docket No. G-7156. The Gulf-El Paso contract was amended from time to time to increase the volume of surplus residue gas covered by the sale. As a result the Commission issued Orders from time to time including one dated August 31, 1956 in Docket No. G-57156 and one [130] dated February 24, 1958, in Docket No. G-13445, amending the certificate to include these increased volumes.

2. Effective November 1, 1957, Gulf transferred to Warren Petroleum Corporation, a 100% owned subsidiary organized under the laws of the State of Delaware, certain facilities including the Waddell Plant with its related gathering lines and the Gulf-El Paso Gas Sales Contract dated January 26, 1951, as amended. Gulf retained all of its oil and gas leasehold interests, including the term leases here involved. Gulf entered into a percentage-type contract for the sale of casinghead gas from such term leases with Warren Petroleum Corporation. On October 31, 1957, Warren Petroleum Corporation filed an application with the Commission to assume the duties and obligations of Gulf and to be

substituted for Gulf in Gulf's certificates to sell surplus residue gas from the Waddell Plant to El Paso. By Order dated June 9, 1960, in Docket Nos. G-2585 et al and G-2682 et al, including Docket Nos. G-7156 and G-13445 covering the Waddell Plant sale, the Commission substituted Warren Petroleum Corporation for Gulf in said dockets and in Rate Schedule No. 43 related thereto.

3. Effective December 31, 1971, Warren Petroleum Corporation was merged into its parent corporation, Gulf Oil Corporation. As a result of this merger, all of Warren Petroleum Corporation's contractual rights and properties were from that date forward, and are now, owned by Gulf Oil Corporation, which assumed the duties, liabilities, obligations and duties of Warren Petroleum Corporation. Thence forward the properties previously owned by Warren Petroleum Corporation have been operated in the name of Warren Petroleum Company as a division of Gulf Oil Corporation, and Warren Petroleum Corporation ceased to exist as a legal entity.

On April 14, 1972, Warren Petroleum Company, a Division of Gulf Oil Corporation, filed a Petition in Docket No. G-4101 et al, including G-7156 and G-13445, to redesignate all of Warren Petroleum Corporation's rate schedules as rate schedules of Warren Petroleum Company, a Division of Gulf Oil Corporation. Attached to this Petition was a Certificate of Ownership and Merger and a certificate from the Secretary of the State of Delaware evidencing the merger. The Commission by Order dated August 2, 1970, in said Dockets, substituted Warren Petroleum Company, a Divi-

sion of Gulf Oil Corporation, for Warren Petroleum Corporation and accepted the notices of succession.

[131] Therefore there are no contracts for sale of gas between Warren Petroleum Corporation and Gulf Oil Corporation since Warren Petroleum Corporation no longer exists, and the contracts which once existed between the parties have been merged in Gulf Oil Corporation. It is elementary that a legal entity cannot have a contract with itself. Thus there can be no abandonment between the operating divisions of Gulf Oil Corporation within the meaning of Section 7(b) of the Natural Gas Act.

V.

No Partial Abandonment by Warren

The second question posed by El Paso involves the reversionary owners of the minerals under the fixed term leases and is of no concern to Gulf. The third question raised by El Paso is whether Warren Petroleum Corporation may "reduce its sales in interstate commerce of residue gas to El Paso, the present level of which is attributable in part to production from the fixed term leases". The short answer to this question is that there is no Warren Petroleum Corporation and therefore, no abandonment authorization could be required since the Commission has approved the substitution of Gulf for Warren Petroleum Corporation in its Order dated August 21, 1972, referred to above.

Presumably, El Paso would raise the same question with regard to the sale of residue by Warren Petroleum Company, a Division of Gulf Oil Corporation. If so, the answer is that Gulf does not propose to abandon

the delivery to El Paso of surplus residue gas available for sale from its Waddell Plant. The Supreme Court of Texas in *Gulf Oil Corporation et al vs. Southland Royalty Company, et al,* 496 S.W. 2d 547 (1972) held that the term leases will expire on July 14, 1975, and that on that date the mineral rights, including gas, under said leases will revert as a matter of law to the reversionary mineral interest owners, Southland Royalty Company, et al. Gulf's obligation under its Gas Sales Contracts with El Paso is to deliver the surplus residue gas which it has available for sale from the gas which it produces or purchases and processes in said plant.

Subsequent to July 14, 1975, Gulf will have no right, title or interest in the gas produced from the term leases. It will thenceforth belong to and be the exclusive property of the reversionary mineral interest owners in the term leases. Such gas will no [132] longer be "surplus residue gas" from said plant within the meaning of the Gulf-El Paso contracts.

Gulf intends to deliver to El Paso all of the surplus residue gas it has available for sale from said plant after July 14, 1975, for the full term of the contracts. This is the full measure of Gulf's obligation to El Paso. The fact that a portion of Gulf's gas supply will be lost by operation of law and will no longer be available for delivery after processing to El Paso constitutes no partial abandonment because Gulf intends to deliver to El Paso all surplus residue gas to which El Paso is entitled.

VI.

Conclusion

It is submitted that:

1. Gulf's Petition to Intervene in this proceeding should be granted.

2. There are no sales by Warren Petroleum Corporation to Gulf Oil Corporation and hence no abandonment of such sales is possible within the meaning of Section 7 (b) of the Act.

3. Warren Petroleum Company, a Division of Gulf Oil Corporation, intends to deliver to El Paso the full volume of surplus residue gas it has available for sale from the Waddell Plant after July 14, 1975, as before. While the partial loss of gas supply resulting from the expiration of the term leases on July 14, 1975 will inevitably reduce the volume of surplus residue gas available for delivery to El Paso, such fact does not constitute any abandonment by Gulf of its delivery obligation to El Paso.

El Paso's Petition as to Gulf Oil Corporation should be dismissed.

Respectfully submitted,

B. James McGraw
Warren M. Sparks

/s/ Warren M. Sparks
Attorneys for Gulf Oil Corporation

[133] (VERIFICATION OMITTED IN PRINTING)

• • • • • • • • • •

[134] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[135] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(RECEIVED MARCH 24, 1975)

Answer of El Paso Natural Gas Company to Petition to Intervene and Response of Gulf Oil Corporation

EL PASO NATURAL GAS COMPANY ("El Paso"), pursuant to Sections 1.8 and 1.9 of the Commission's Rules of Practice and Procedure, hereby respectfully submits its answer to the petition to intervene and response of Gulf Oil Corporation ("Gulf")[1] respecting the petition for issuance of a declaratory order which was filed by El Paso in the above-styled and docketed proceeding on January 20, 1975.

I.

On January 20, 1975, El Paso, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, filed with the Commission a petition for issuance of a declaratory order resolving the following questions: (i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under

[1] Petition to Intervene and Response of Gulf Oil Corporation, Docket No. CP75-209 (filed March 3, 1975).

said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act ("Act") and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Warren Petroleum Corporation and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease? (ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce? (iii) Given the [136] facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

II.

On March 3, 1975, Gulf timely filed a petition to intervene and response in this proceeding. Therein, Gulf states its position that the facts and circumstances of this proceeding do not require it to obtain any abandonment authorization from the Commission. In particular, Gulf addressed itself to the first and third issues raised by El Paso's petition. First, Gulf states that no contracts for the sale of the gas in question

exist between Gulf and Warren Petroleum Corporation because Warren Petroleum Corporation has been merged into Gulf and subsequently became Warren Petroleum Company, a division of Gulf; therefore, according to Gulf, Gulf need not obtain abandonment authorization in order to cease sales of the gas in question to Warren Petroleum Corporation. Second, Gulf alleges that no abandonment authorization could be required from Warren Petroleum Corporation to reduce its sales in interstate commerce of the residue natural gas in question to El Paso because Warren Petroleum Corporation does not exist. Gulf further alleges, however, that even if El Paso were to raise the same question with regard to the sale of residue gas by Warren Petroleum Company, no abandonment authorization would be required because subsequent to July 14, 1975, Gulf will no longer have a right, title, or interest in the gas produced from the 50-year fixed term lease and such gas after July 14, 1975, will no longer be surplus residue gas within the meaning of the Gulf-El Paso contracts; Gulf, therefore, will no longer have any obligation to deliver such gas to El Paso.

III.

Although El Paso does not accept Gulf's conclusions, El Paso accepts Gulf's clarification of the facts. In order to make El Paso's petition agree with the facts as outlined by Gulf, El Paso submits that Warren Petroleum Company should be substituted for Warren Petroleum Corporation in El Paso's petition herein.

IV.

Based on the facts as stated by Gulf, it appears that there are no sales by Warren Petroleum Corporation

to Gulf and hence no abandonment of such sales is possible within the meaning of Section 7(b) of the Act. The question, however, remains whether any other lessees under the 50-year fixed term lease, who have been selling gas produced from said lease to Warren Petroleum Company or Gulf, must obtain abandonment authorization under Section 7(b) of the Act to cease such sales.

[137] V.

Gulf alleges that "While the partial loss of gas supply resulting from the expiration of the term leases on July 14, 1975 will inevitability reduce the volume of surplus residue gas available for delivery to El Paso, such fact does not constitute any abandonment by Gulf of its delivery obligation to El Paso." Gulf mistakenly places undue emphasis on the contractual relationship between El Paso and Warren Petroleum Company. There is no question as to Warren Petroleum Company's contractual obligation to El Paso. The question, as stated by El Paso in its petition herein, is whether Warren Petroleum Company may reduce it *sales in interstate commerce* of residue gas to El Paso without prior Commission authorization. The circumstances which compelled El Paso to file its petition is the fact that the gas produced from the lease in question is at present physically moving in interstate commerce, not the fact that Warren Petroleum Company is at present contractually obligated to sell said gas to El Paso. As El Paso stated in its petition herein, it is well established that once natural gas is dedicated to interstate commerce it cannot be removed from interstate commerce without abandonment authorization pursuant to

Section 7(b) of the Act,[2] and it is also well established that natural gas is dedicated to interstate commerce, not by the contractual arrangements pertaining to it, but by the physical movement of the gas.[3] In the instant case, natural gas, the production of which will revert to the reversionary mineral interest owners on July 14, 1975, is presently moving in interstate commerce as it leaves the wellhead. Therefore, such gas should not be removed from interstate commerce without prior Commission clarification of issues as delineated in El Paso's petition.

VI.

WHEREFORE, for the foregoing reasons, El Paso Natural Gas Company respectfully requests that the Commission consider this answer to petition to intervene and response of Gulf Oil Corporation and respectfully requests that the Commission promptly act upon El Paso's petition for issuance of a declaratory order.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

/s/ By WALTER G. HENDERSON
Walter G. Henderson
Assistant Vice President

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[2] Sunray Mid-Continent Oil Company v. FPC, 364 U.S. 137 (1960).

[3] California v. Lo Vaca Gathering Company, 379 U.S. 366 (1965).

[138]
G. Scott Cuming
Senior Vice President and General Counsel
Harris S. Wood
Arthur R. Formanek, Jr.
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas 79978

C. Frank Reifsnyder
Hogan & Hartson
815 Connecticut Avenue
Washington, D.C. 20006

Counsel for

EL PASO NATURAL GAS COMPANY

Dated: March 12, 1975

[139] (VERIFICATION OMITTED IN PRINTING)

. . . . . .

[140] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

. . . . . .

[141] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Filed March 17, 1975

Answer of Mineral Interest Owners to Petition of Mitchell Energy Corporation for Leave to Intervene

Mineral Interest Owners,[1] pursuant to Section 1.8(e) of the Commission's Rules of Practice and Procedure, hereby file their answer to the petition of Mitchell Energy Corporation (Mitchell) for leave to intervene in the above-captioned proceeding which involves a petition for declaratory order filed by El Paso Natural Gas Company (El Paso). Mineral Owners do not oppose the intervention of Mitchell, but believe that Mitchell's request for intervention is based on a misunderstanding of the issues involved herein.[2]

1.

As detailed in the petition to intervene and answer of Mineral Interest Owners filed March 3, 1974, the "controversy or uncertainty" which is the subject of El Paso's petition arises from the termination on

[1] Those parties comprising the group herein referred to as Mineral Interest Owners are set forth in Exhibit A attached hereto.

[2] Mitchell's misunderstanding of the issues involved is not surprising in light of the fact that El Paso's petition presents three complex questions in a manner clearly prejudicial to Mineral Interest Owners.

July 14, 1975 of the 50-year fixed term oil and gas lease held by Gulf Oil Corporation (Gulf) on certain acreage in Crane County, Texas. A portion of the gas attributable to Gulf's fixed-term leasehold estate [142] is sold to El Paso at the tailgate of the Waddell gasoline plant which is operated by Warren Petroleum Company, a division of Gulf Oil Corporation. Under established principles of Texas oil and gas law, Mineral Interest Owners will, upon termination of Gulf's fixed-term leasehold estate of July 14, 1975, hold fee simple title to their pro rata share of the mineral estate underlying the subject acreage.[3]

In other words, upon termination of the lease on July 14, 1975, Gulf will have no right, title or interest in any gas produced from and attributable to the fee simple mineral estate of Mineral Interest Owners. Prior to termination of the fixed-term lease, no sales will have been made of gas attributable to the fee simple mineral estate of Mineral Interest Owners and, consequently, no gas attributable to that interest could have been previously dedicated to the interstate market. Accordingly, Mineral Interest Owners have shown in their answer to El Paso's petition that they need not obtain Section 7(b) abandonment authorization before initiating sales of gas attributable to their mineral estate to the purchaser of their choice.[4]

---

[3] Any question concerning the termination date of this lease was conclusively resolved by the Supreme Court of Texas in *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W. 2d 547 (Tex. Sup. Ct. 1973).

[4] Mineral Interest Owners have agreed to sell to Intratex Gas Company the gas attributable to the fee simple mineral estate they will hold on July 14, 1975 following the termination of Gulf's leasehold estate.

2.

As support for its petition for leave to intervene in this proceeding, "Mitchell submits that the issues presented in this case are similar in nature to those raised in Mitchell Energy Corporation, CI75-296."[5] From this premise, Mitchell [143] argues that its interest may be directly affected by any resolution of the issues presented by El Paso in its petition for declaratory order. Mineral Interest Owners have reviewed the filings and orders in *Mitchell Energy Corporation*, Docket No. CI75-296, and submit that the issues involved in this case are unrelated to those presented in Docket No. CI75-296.

In the *Mitchell* proceeding, an application for certificate of public convenience and necessity was filed to enable Mitchell "to continue to provide the same service to Tennessee as was provided by Gray Wolfe Inc., Mitchell's predecessor in interest in the Pinehurst Field in Montgomery County, Texas.[6] In its application, Mitchell states that it "acquired the interests of the Gray Wolfe Company in the Pinehurst Field and submits this Application as a successor in interest so as to continue to provide the same service to Tennessee from the Gray Wolfe interests in the Pinehurst Field.[7] Therefore, it is clear that the proceedings in Docket No. CI75-296 involve a typical successor-in-interest situation which the holder of an

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[5] Petition of Mitchell Energy Corporation for Leave to Intervene, at 2.

[6] Application for a Certificate of Public Convenience and Necessity, Mitchell Energy Corp., Docket No. CI75-296, filed November 6, 1974, at 1.

[7] *See Id.* at 2.

existing lease sells its working interest in that lease to another party and the successor must take that working interest subject to existing contractual and regulatory limitations under which the seller is operating.[8]

In contrast, the instant proceeding presents a rare and nearly unique situation in which all interests held by the existing holder of the leasehold estate will terminate and expire on a future date. The leasehold owner (Gulf) has not, and indeed cannot under any principle of law, effect a transfer of any property right following termination of the lease. Therefore, Mineral Interest Owners will not, upon termination of the fixed-term leasehold estate, be successors [144] in interest to Gulf. On that date, Gulf will have no interest whatsoever in the mineral estate underlying the subject acreage and will have no interest to which Mineral Interest Owners could succeed. As a result, no basis exists for analogizing the instant case to the situation where a lessee (Gray Wolfe) voluntarily transfers his working interest to a third party (Mitchell) who must obtain certification and continue the sale unless abandonment authorization is approved by the Commission.[9]

3.

In view of the above, Mitchell Interest Owners submit that Mitchell's petition to intervene is based on a misunderstanding of the legal relationships between

[8] Graridge Corp., 30 FPC, 1156 (1963).

[9] *See* Opinon No. 638, *Perry R. Bass* v. *El Paso Natural Gas Co.*, 48 F.P.C. 1269, 1276 (1972).

the parties in this proceeding. As stated above, Mineral Interest Owners have no objection to the participation herein of Mitchell, but believe that Mitchell's position in Docket No. CI75-296 does not bear on the issues herein and that this proceeding cannot be used as a vehicle to litigate those issues.

Respectfully submitted,

/s/ J. Evans Attwell
J. Evans Attwell
Vinson, Elkins, Searls,
Connally & Smith
2548 First City National Bank
Building
Houston, Texas 77002
Platt W. Davis III
Vinson, Elkins, Searls, Connally
& Smith
1701 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Attorneys for Mineral Interest Owners

March 17, 1975

[145] (Certificate of Service Omitted in Printing)

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[146]

Exhibit A

Mineral Interest Owners

Percentage Ownership of Mineral Estate
(Calculated on Acreage Basis)

	% Ownership
Southland Royalty Company William Y. Penn, *et al.*, Trustees, Nancy Elizabeth Penson, Penn Resources, Inc.,	47.0
Elizabeth Hudson Penn Trustees Under the Will of Warren Wright, Deceased	8.6 25.7
Total Mineral Interest Owners	81.3
Other Mineral Owners	18.7
TOTAL	100.00

[147]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CI75-594

El Paso Natural Gas Company

Received April 9, 1975

Petition of Texaco Inc. for Issuance of a Declaratory Order

Texaco Inc. (Texaco) pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, hereby petitions for the issuance of a declaratory order applicable to Texaco in this proceeding, which order would resolve a legal issue identical to that raised by El Paso Natural Gas Company (El Paso) in its request for a declaratory order in this proceeding. The issue is whether a lessee, by making an interstate gas sale, can commit more than its real property interest (*i.e.*, its rights under its lease), thereby both encumbering forever the real estate and imposing upon the non-participating mineral fee owner the obligations of Section 7 of the Natural Gas Act.

As stated in Texaco's Petition for Leave to Intervene in this cause, Texaco is one of the reversionary mineral interest owners of property in Ector County, Texas, which property is currently leased to Gulf Oil Corporation (Gulf). This lease[1] will expire on August 7, 1975 by virtue of its 50-year fixed term pro-

[1] Attached hereto as Exhibit "A", recorded in Volume 18, page 551 of the Deed Records of Ector County, Texas.

vision. At that time Gulf's leasehold estate and Texaco's royalty interest are extinguished, and Texaco, as the owner of an unleased one-fourth mineral interest becomes the owner of all operating rights in such interest. It should be noted that Gulf's lease on the above-mentioned property contains exactly the same language (Paragraph 2)[2] concerning termination as does Gulf's lease on the Crane County property that is the subject of El Paso's petition for a declaratory order in this proceeding. This fact is easily verified by referring to Paragraph 2 [148] of the lease[3] which is attached as Exhibit "A" to El Paso's petition for a declaratory order. The only difference regarding termination is that Gulf's lease on the Ector County property will terminate on August 7, 1975, whereas Gulf's lease on the Crane County property will terminate on July 14, 1975, because of different dates of execution of the leases.

Texaco acquired its mineral fee, hereinafter referred to as its "Leon Goodman Mineral Fee," through a mineral deed dated May 4, 1929, a true conformed copy of which (recorded in Volume 27, page 624 of the deed records of Ector County, Texas) is attached hereto as Exhibit "B" and made a part hereof. The grantees conveyed to Texaco (then The Texas Company) one-fourth "of the oil, gas and other minerals, whether similar or dissimilar, as well as a like interest in and to the royalties and rentals due or to become due under any present valid lease . . ."

---

[2] Section 1 of the Ector County lease.

[3] Section 1 of the Crane County lease.

in the above-mentioned property in Ector County, Texas.

Texaco has knowledge of a casinghead gas sales contract through which Gulf in currently selling gas from the above-mentioned properties to Phillips Company (Phillips). Texaco is informed that Phillips sells, from the tailgate of its Goldsmith Plant in Ector County, Texas, the residue gas to El Paso through Phillips' Rate Schedule Nos. 7, 32, 33, 497 and 483.

As a royalty owner, Texaco is in no way a party to the present contract by which Gulf sells production from the above-mentioned property to Phillips. Neither is Texaco a party to the residue gas sales contracts through which Phillips sells gas from the Goldsmith Plant in Ector County to El Paso.

The above description of facts demonstrates that Texaco is in the same legal position as Exxon Corporation (Exxon) and Mineral Interest Owners as described in the pleadings of those two parties dated March 3, 1975. Texaco adopts the legal arguments made in both of those pleadings, but reserves its right to file formal briefs in this proceedings should the Commission desire further argument. In such case Texaco supports the briefing schedule suggested at page 5 of Exxon's above-mention pleading, which would call for simultaneous initial briefs by all parties to be due 30 days after the Commission acts upon Exxon's request. Texaco would also support Exxon's suggestion that simultaneous reply briefs by all parties would be due 20 days after the due date for initial briefs.

[149] In the event that the Commission issue a declaratory order without giving the parties an opportunity for further briefing, Texas requests that the Commission expressly hold that no abandonment is needed upon termination of Gulf's oil and gas leasehold estate, and that Texaco's Leon Goodman Mineral Fee is unencumbered by previous actions taken and commitments made by Gulf and by Phillips with respect to gas produced from Gulf's terminated leasehold estate.

Respectfully submitted,

TEXACO INC.

KIRK W. WEINERT
C. FIELDING EARLY, JR.
ROGER L. BRANDT
P. O. Box 52332
Houston, Texas 77052

By /s/ C. FIELDING EARLY, JR.
C. Fielding Early, Jr.
Attorney for Texaco Inc.

Houston, Texas

April 7, 1975

[150] (AFFIDAVIT OMITTED IN PRINTING)

• • • • • • • • • •

[151] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

• • • • • • • • • •

[152] **Exhibit "A"**

Form W. F. 189 "A"—11-54—1M

OIL AND GAS LEASE

THE STATE OF TEXAS,
County of Ector

SECTION 1.

Paragraph 1. KNOW ALL MEN BY THESE PRESENTS:

That We, Mrs. C. A. Goldsmith and Charley M. Goldsmith and wife Helen Goldsmith of Midland,

of the County of Midland, State of Texas, hereinafter called Lessor (whether one or more), ha've and by these presents do grant, lease, demise and let unto Gulf Production Company, hereinafter styled Lessee, the tract of land hereinafter described, with the exclusive right of exploiting the same for and producing oil and gas therefrom, and to that end also grant the exclusive right of drilling and operating thereon for oil and gas, together with rights of way for telephone and telegraph lines and right to lay pipe lines and operate the same for the purpose of conveying water, oil, steam and gas, to erect, maintain and use storage tanks, sheds and buildings for the purpose of storing and caring for the minerals which may be produced, and the right to have and use sufficient water, oil, gas, wood and coal from the premises, free of cost, to operate and drill any wells that Lessee may have or in the treating, so as to make merchantable, such minerals, and also such other privileges as are reasonably requisite for the conduct of said operations; and the right to remove, replace and substitute material and machinery, to draw and remove casing from abortive and abandoned wells, and at the termination of this lease to remove all property placed thereon by Lessee.

The said land is situated in Ector County, State of Texas, and described as follows:
All of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 27 28, 29, 30, 33, 34, 35, 36, 39, 40, 45, 46 and 47, all in T. & P. RR Co. Survey Block 44, T-1-S.

$5.00 Documentary Stamps (Cancelled)

It is agreed that for the purpose of calculating rentals, both before and after partial surrender, as hereinafter provided, the leased land contains Nineteen Thousand Eight Hundred Forty (—19,840—) acres; nevertheless, all of the above described lands is embraced in this lease, be it more or less.

Par. 2. TO HAVE AND TO HOLD unto said Lessee and to Lessee's successors and assigns for the term of Twelve (12) years from the date hereof and as much longer thereafter as oil or gas (or other minerals, if produced hereunder) are produced from said land. Provided, that this lease shall not remain in force longer than fifty (50) years from this date, and provided further, that a temporary cessation of production due to ceasing out-working well or drilling deeper of any well, or similar causes occuring after production secured, shall not terminate this lease. And Lessor covenants that Lessor has good title to said land and will protect Lessee in the quiet and peaceable possession thereof.

Par. 3. Lessee agrees to begin operations for the drilling of a well on the premises within twelve (12) months from the date hereof, or, failing so to do, Lessee agrees to pay in the manner below stated for each six (6) months' period for which such drilling is delayed, not to exceed eighteen (18) such periods, the sum of $1,488.00 Dollars, such payment to be made on or before the beginning of each such period and shall be made by paying the same to the Lessor in person or to the First National Bank of Midland, Texas, or Lessee may mail Lessee's check to Lessor in said sum in care of said Bank, payable to Lessor, said Bank being hereby constituted Lessor's agent to receive said funds for Lessor or to receive and deliver said check to said Lessor, as the case may be; in either of the three methods of making such payment Lessee may use Lessee's check and the mailing of said check shall be deemed making payment; if Lessee shall fail to make such payment in advance as above provided, and such failure or default shall continue for thirty (30) days after the due date of such payment, Lessor shall have the right to forfeit this lease.

Par. 4. In the case of change of ownership of the land herein leased, or some part thereof, whether by descent and partition, devise, conveyance or otherwise, the above designated Bank shall become the Trustee for all the owners to receive and distribute the rentals among them, and the payment of the rentals to such Bank shall prevent forfeiture of this lease. In all cases where the original depositary Bank shall refuse to receive payment of rentals, or should go out of business, or consolidate with another Bank, the Lessor, or successors in interest, shall have the right to designate in writing some Bank as Trustee, and until such designation is made and Lessee notified in writing such rentals shall not be due and no forfeiture of this lease can be declared if such rental is paid within thirty (30) days after receipt of such notice by Lessee.

Par. 5. If while this lease is in force as herein provided, Lessee shall have begun operations in attempt to find oil or gas, then, without making any further payments Lessee may continue such attempt, and may make as many attempts as Lessee pleases; but if Lessee shall abandon such attempts for ninety (90) days without finding oil or gas in paying quantities, Lessee shall resume payment of the rentals falling due after the completion or abandonment of such well, at the next ensuing rental period beginning after such completion or abandonment; provided Lessee shall have at least ninety (90) days from the date of such abandonment of operations in which to make such payment and on resuming payment of rentals Lessee shall have the right to continue making the same or of beginning operations for the drilling of a well and to alternate such rights.

Par. 6. If operations shall not be begun on or before the expiration of ten (10) years from this date, this lease shall wholly terminate, but if, prior to the termination of such ten (10) years, Lessee shall have begun operations in attempt to find oil or gas and is engaged in such operations at the end of the ten-year period, then Lessee shall have the right to continue such operations and also to make as many additional attempts to find oil or gas as Lessee desires beyond the expiration of said ten-year period; provided, however, that these attempts at extending such rights beyond such ten years must be successive in the sense that, until oil or gas be found in paying quantities, not more than sixty (60) days shall elapse between the abandonment of work on one well and the beginning of operations on another, and provided further that this right to make attempts before the discovery of oil or gas shall not continue in any event longer than twelve (12) years from the date hereof.

BEST COPY AVAILABLE

Deleted "Lessor" & "Lessee" changing to Lessee & Lessor 8/14/28

SECTION 2.

Paragraph 1. If oil shall be found on said premises Lessee shall deliver as royalty to Lessor, free of expense, one-eighth (⅛) part of the oil saved from that produced, after deducting such part as may be used for drilling and operating on the land and treating the oil or gas so as to make it merchantable; such delivery to be made either into tanks supplied by Lessor with connections by Lessor provided, or into any pipe line that may be connected with the well; or Lessee may, at Lessee's option, buy such royalty oil, paying the current market price in the field at the time of production. If Lessee shall operate so as to save and utilize casinghead gas from said premises, then Lessee shall pay as royalty to Lessor one-eighth (⅛) part of the value of such gas, calculated at the rate of four (4) cents per one thousand (1,000) cubic feet of the casinghead gas, calculation as to quantity to be made on the basis of four (4) ounces pressure above atmospheric pressure at the temperature of sixty (60) degrees Fahrenheit, as royalty on such casinghead gas, and such royalty accruing in each six months' period, beginning from the date hereof, to be paid within thirty (30) days after expiration of such period. If any well on said premises shall produce natural gas in paying quantities, and such natural gas is used off the premises or marketed by Lessee, then Lessee shall be paid at the rate of Two Hundred ($200.00) Dollars per annum for each and every such well, such payment to be made on or before the end of each such year in which such well is brought in.

Par. 2. If, as result of any explorations under this contract any other minerals than oil or gas shall be found in quantities deemed by the Lessee to be paying, then Lessee shall have the optional right to mine for and produce the same, paying to the Lessor what, under all the circumstances, may be a reasonable royalty.

Par. 3. All money royalties may be paid to Lessor as provided in Paragraph 3 of Section 1 hereof. Should the interest owned by Lessor in said land prove to be less than the whole, the royalties and rentals to be paid hereunder shall be paid to the Lessor in proportion only that Lessor's interest is to the entire interest or whole.

SECTION 3.

Paragraph 1. It is agreed that, without the valid written consent of both parties hereto, no well shall be drilled, no shaft sunk, and no mining operations of any kind shall be carried on, within two hundred (200) feet of any dwelling houses now on said premises, and that the use of the surface of the land is hereby granted only so far as may be necessary or proper and convenient for the exercise of the rights herein granted.

SECTION 4.

Paragraph 1. The obligation of Lessee with respect to drilling offset wells shall be to drill such offset wells as a prudent, responsible operator would drill under the same conditions if he owned the land hereby leased, subject to the following provisions, to-wit: When an offset well is demandable under the above provisions, the Lessee shall have the option of either drilling such offset well or of paying a royalty with respect thereto calculated as follows—take the well, as to which an offset is demanded, as a center; transcribe a circle around it with a radius of three hundred feet; ascertain what proportion of the area of such circle falls within this lease; such proportion shall be the proportion of royalty which shall be paid on the production of the well as to which an offset is demandable; thus, if that portion of the area of the circle included in this lease is one-fourth of the total area, then one-fourth of the royalty which would be payable on the well to be offset if the same was on this lease shall be paid; Provided, that no well need be offset when there is a well practically or nearly between it and the line of this lease and such latter well has been offset, or royalty paid with respect thereto; Provided, further, if the Lessee so elects, an offset well may be drilled at any time, even after royalties have been paid, and, from the beginning of such well, no royalty shall be paid with respect to the well to be offset. Such royalty shall be a money royalty determined by the market value of the oil when produced. This provision shall also apply to gas wells provided the gas is marketable at the time and place.

SECTION 5.

Paragraph 1. Lessee further agrees to pay the actual cash value, at the time of destruction, of any growing crops destroyed on said leased premises by operations hereunder, or the reasonable damage to any such crops caused by such operations.

SECTION 6.

Paragraph 1. Lessee may pay off any lien or taxes now or hereafter due on or against said land; and if Lessee does so, Lessee shall be subrogated to all the rights of the holder of such lien or tax debt, and shall have a lien on all rentals and royalties accruing hereunder for reimbursement.

SECTION 7.

Paragraph 1. When drilling or other operations are delayed or interrupted by storm, flood, or other act of God, by fire, war, rebellion, scarcity of water, insurrection, riots, strikes, scarcity of labor, difficulties with employees, or failure of carriers to transport or furnish facilities for transportation, or as the result of some order, regulation or necessity of the Government, or as the result of any cause whatsoever beyond the control of the Lessee, the time of such delay or interruption shall not be counted against the Lessee—anything in this lease to the contrary notwithstanding.

SECTION 8.

Paragraph 1. Lessee is hereby given the right to surrender this lease at any time as to all or any part of the land hereby leased upon paying to the Lessor _____ cents per acre for each acre surrendered in addition to any sums that may be then due and accrued under the terms hereof, in the manner provided in Paragraph 3 of Section 1 hereof, and upon making such surrender the Lessee shall thereupon be released from all further payments, liabilities, or obligations as respects the land surrendered, and the rentals provided for in Paragraph 3 of Section 1 hereof shall be reduced by the proportion of acreage surrendered to the whole.

SECTION 9.

Paragraph 1. It is further agreed that all the conditions and terms herein shall extend to the heirs, executors, legal representatives, successors in interest and assigns, of the parties hereto; but no change of ownership of the land, or part thereof, shall impose any additional obligation or burden on the Lessee, and to that end Lessor hereby covenants for himself, his heirs, assigns and successors in interest, that in case of any change of ownership of said land, or part thereof, whether by conveyance, will, inheritance, partition, or otherwise, all rentals and royalties accruing hereunder shall be paid to the new owners in proportion to their ownership of the whole of the land hereby leased so that no owner of a segregated part of said land shall be entitled to the whole royalties accruing from developments on said segregated tract, but only to such part of such royalty as the acreage in his tract is to the whole acreage embraced in this lease; this covenant shall be taken and construed as a covenant running with the land and binding on all successors in interest to Lessor herein. The Lessee shall not be held responsible for the payment of such rentals or royalties to such new owner unless and until the Lessee shall be furnished with the instrument of transfer, or a duly certified copy thereof, and in case of no transfer in writing, with legally sufficient evidence thereof, such evidence of transfer to be furnished at least thirty (30) days before such royalties or rentals become due. If, by change in ownership, more than ten (10) separate parties become entitled to royalty, Lessee may require, before paying royalty, that such parties so entitled designate, in a writing furnished to the Lessee, one of their number, or a Trustee, to receive the payment of the royalty for all of them.

SECTION 10.

Paragraph 1. It is further agreed that in the event this Leasehold shall be assigned as to a part or as to parts of the above described lands (and such right of assignment is hereby given), and the Lessee or assignee or assignees shall fail or make default in the payment of the proportionate part of the rentals due from him or them, such default shall not operate to defeat or affect this lease, in so far as it covers a part or parts of said land upon which the said Lessee, or any assignee of the Lessee, shall make due payment of his proportionate part of said rental; but operations begun on any part of the leased premises will keep this lease in force as to all the premises upon which all rentals falling due prior to the beginning of such operations have been paid.

Par. 2. It is further agreed that in case of change of ownership of parts of the land, or of this leasehold, that the rentals shall be apportioned in accordance with the acreage such transferee or assignee becomes entitled to.

Par. 3. It is further agreed that any rentals paid and received hereunder shall constitute a consideration, not only for delay in drilling the well but for securing the right to pay future rentals to keep the lease in full force and effect until drilling is commenced, and any such rentals paid shall be deemed and considered as adequate consideration for all the rights herein granted.

$4,960.00

SECTION 11.

Paragraph 1. Lessee has this day paid to Lessor the sum of Ten Thousand Four Hundred Sixty and 00/100 (10,460.00) DOLLARS, the receipt of which is hereby acknowledged, which payment is received in full payment and satisfaction and is deemed sufficient consideration for each and every right hereby granted. It is stipulated and agreed that this instrument embraces the entire contract between the parties, and that no promises or representations of any kind not contained herein have been made to induce the execution of this contract.

IN TESTIMONY WHEREOF the parties hereto have duly executed this instrument, on this the 7th day of August, A. D. 1928, the parties hereto acting in person or by duly authorized agent.

Witnesses:

Mrs. C. A. Goldsmith
Mrs. Helen Goldsmith
Charley H. Goldsmith

Recorded Vol. 10
Page 551
Ector County, Texas

Lessor.

GULF PRODUCTION COMPANY,
Lessee.
By W. H. LOURCEY
Agent.

ACKNOWLEDGMENTS

THE STATE OF TEXAS,
County of MIDLAND } Before me, B. Ground

a Notary Public in and for the County of Midland and State of Texas, on this day personally appeared Mrs. C. A. Goldsmith, a widow, and Charley H. Goldsmith known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 7th day of August, A. D. 1928

(SEAL) B. GROUND
Notary Public,
In and for MIDLAND County, Texas.

THE STATE OF TEXAS,
County of TARRANT } Before me, ENE H. CRAIG

a Notary Public in and for the County of TARRANT and State of Texas, on this day personally appeared W. H. Lourcey known to me to be the person whose name is subscribed to the foregoing instrument as Agent of Gulf Production Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said Gulf Production Company.

Given under my hand and seal of office on this the 8th day of August, A. D. 1928

(SEAL) E. H. CRAIG
Notary Public,
In and for TARRANT County, Texas.

THE STATE OF TEXAS,
County of MIDLAND } Before me, B. GROUND

a Notary Public in and for the County of Midland and State of Texas, on this day personally appeared Mrs. Helen Goldsmith wife of Charley H. Goldsmith known to me to be the person whose name is subscribed to the foregoing instrument and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Mrs. Helen Goldsmith acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office on this the 7th day of August, A. D. 1928

(SEAL) B. GROUND
MIDLAND Notary Public,
In and for County, Texas.

[156]

No.....

OIL AND GAS LEASE

TEXAS

Mrs. C. A. Goldsmith Lease

TO

GULF PRODUCTION CO.

Post Office address of Lessor Authorized to receive rent, is

.....

Filed for Record this the.....day of

.....A. D. 192....., at.....

o'clock.....M.

.....

County Clerk.

By .....

Deputy.

Recorded....., A. D. 192.....

in ..... Record

of..... Book.....

Page.....

.....

County Clerk.

By .....

Deputy.

CLOUD CROOS & CO.

[157]

Exhibit "B"

[158]

5 55

MINERAL DEED

Know All Men by These Presents: That (we) Leon Goodman, and wife Rose H. Goodman; and Foy Proctor, and wife Hable E. Proctor,

of Midland, Texas, for and in consideration of the sum of ------Twenty Thousand and Nineteen-------Dollars ($20,019.00) cash in hand paid by The Texas Company, a Texas corporation, Grantee, do hereby GRANT, BARGAIN, SELL AND CONVEY unto the said THE TEXAS COMPANY One Fourth (1/4) of the oil, gas and other minerals, whether similar or dissimilar, as well as a like interest in and to the royalties and rentals due or to become due under any present valid lease thereon, on, in, or under, the following described tract of land in the County of Ector, Texas, to-wit:

All of sections Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen(18), Nineteen (19), Twenty (20), Twenty One (21), Twenty Two (22), Twenty Seven (27), Twenty Eight (28), Twenty Nine (29) Thirty (30), Thirty Three (33), Thirty Four (34), Thirty Five (35), Thirty Eight (38), Thirty Nine (39), Forty (40), Forty Five (45), Forty Six (46), and Forty Seven (47), Block Forty Four (44), Township One South(Twp.1-S), T. & P. R. R. Company Survey, Ector County Texas, and containing Twenty Thousand and Nineteen (20,019) acres, more or less.

7-1049-A

together with the rights of ingress and egress for the purpose of drilling or mining for, and producing, storing and transporting oil, gas and other minerals, and of erecting any and all necessary structures for such drilling, mining, transporting and storing, and erecting any and all buildings necessary or incident to such operation; with the right to remove any and all property of whatever kind or character placed on said premises.

It is agreed that The Texas Company, its successors or assigns, shall never be under obligation to drill or mine for oil or gas or other minerals, but that such mining or drilling, both before and after production, shall be wholly at the option of said grantee, its successors or assigns. [redacted]

TO HAVE AND TO HOLD the above described oil, gas and other minerals and the rights herein granted, all and singular, unto the said The Texas Company, its successors and assigns, forever; and we do hereby bind ourselves, our heirs, executors and administrators, to warrant and forever defend all and singular said oil, gas and other minerals and the rights herein granted unto the said The Texas Company, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this the 4th day of May, A. D. 1929.

WITNESS:

Leon Goodman
Rose H. Goodman
Foy Proctor
Hable E. Proctor

THE STATE OF Texas }
COUNTY OF Midland } ss.

Before me, the undersigned authority, on this day personally appeared Leon Goodman and his wife, Rose H. Goodman, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed; and the aforesaid wife having been examined by me privily and apart from her husband, and having the same fully explained to her, she acknowledged said instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 4th day of May, 1929.

B. Grossett
Notary Public in and for
Midland County, Texas.

[159] (VERIFICATION OMITTED IN PRINTING)

. . . . . .

[160] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CI75-594

TEXACO INC.

(April 22, 1975)

Notice of Petition for a Declaratory Order

Take notice that on April 8, 1975, Texaco Inc. (Texaco), P.O. Box 52332, Houston, Texas 77052, filed in Docket No. CI75-594 pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) a petition for a declaratory order to resolve Texaco's question of whether a lessee by making an interstate gas sale, can commit more than its real property interest (*i.e.*, its rights under its lease), thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act, as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The petition indicates that on August 7, 1925, Gulf Production Company, the corporate predecessor of Gulf Oil Corporation (Gulf), as lessee, executed a 50-year fixed term oil and gas lease with Goldsmith, *et al.*, lessors. The petition further indicates that by the terms of said lease Gulf obtained the exclusive right of exploiting 19,840 acres of land in Ector County, Texas, and producing oil and gas therefrom and that the leasehold estate expires on August 7, 1975, whereupon the mineral rights shall revert to the reversionary mineral

interest owners. Texaco states that it acquired a reversionary mineral interest ownership in the aforesaid property in Ector County, Texas, when on May 4, 1929, Goodman, *et al.*, conveyed to Texaco (then The Texas Company) one-fourth of the oil, gas and other minerals, and a like interest in the royalties under any lease, in the property.

Texaco states that Gulf is currently selling gas from the aforementioned properties to Phillips Petroleum Company (Phillips) under a casinghead gas sales contract and that Phillips sells, from the tailgate of its Goldsmith Plant in Ector County, Texas, the residue gas to El Paso Natural Gas Company (El Paso) under Phillip's FPC Rate Schedule Nos. 7, 32, 33, 497, and 483. Texaco states that, as a royalty owner, it is in no way a party to either the present contract by which Gulf sells production from the aforementioned property to Phillips or to the residue gas sales contracts under which Phillips sells gas from the Goldsmith Plant to El Paso.

[161] Texaco states that the question it raises in the instant petition is identical to a question raised by El Paso in its petition for declaratory order in Docket No. CP75-209.[1] Texaco alleges that based on the facts presented by El Paso in its petition in Docket No. CP75-209 the reversioners therein, including Exxon Corporation and Mineral Interest Owners, are in the same legal position as is Texaco in the instant factual setting. Texaco states that it adopts the legal arguments made in the pleadings of Exxon Corporation and Min-

[1] Notice of El Paso's petition was published in the Federal Register on February 7, 1975 (40 FR 5818).

eral Interest Owners, dated March 3, 1975, in the proceeding in Docket No. CP75-209, but reserves its right to file formal briefs in the instant proceeding should the Commission desire further argument.

In the event that the Commission issues a declaratory order without giving the parties an opportunity for further briefing, Texaco requests that the Commission expressly hold that no abandonment authorization is needed upon termination of Gulf's oil and gas leasehold estate, and that Texaco's reversionary mineral interest is unencumbered by previous actions taken and commitments made by Gulf and by Phillips with respect to gas produced from Gulf's terminated leasehold estate.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 14, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB
Secretary

[162] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(RECEIVED MAY 8, 1975)

Motion of El Paso Natural Gas Company for Briefing Schedule and Answer to Petition of Texaco Inc. for Issuance of a Declaratory Order

EL PASO NATURAL GAS COMPANY ("El Paso"), pursuant to Sections 1.9 and 1.12 of the Commission's Rules of Practice and Procedure, hereby respectfully submits its motion for briefing schedule, as hereinafter described, and its answer to the petition of Texaco Inc. ("Texaco") for issuance of a declaratory order, in the above-styled and docketed proceeding.

I.

On January 20, 1975, El Paso, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, filed with the Commission a petition for issuance of a declaratory order resolving the following questions: (i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Warren Petroleum Corporation for resale in interstate commerce, obtain

abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Warren Petroleum Corporation and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease? (ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce? (iii) Given the facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

[163] II.

Southern California Gas Company ("SoCal"), Mobil Oil Corporation ("Mobil"), Southwest Gas Corporation ("Southwest Gas"), the People of the State of California and the Public Utilities Commission of the State of California ("California"), Texaco Inc. ("Texaco"), Exxon Corporation ("Exxon"), Mitchell Energy Corporation ("Mitchell"), Pacific Gas and Electric Company ("PGandE"), Gulf Oil Corporation ("Gulf"), and Mineral Interest Owners have filed petitions to intervene herein.[1] Only Gulf has

[1] Petitions to intervene by SoCal, Mobil, Southwest Gas, California, Texaco, Exxon, Mitchell, PGandE, Gulf, and Mineral Interest Owners were filed on February 6, 1975, February 10, 1975, February 14, 1975, February 18, 1975, February 19, 1975, February 18, 1975, February 25, 1975, February 28, 1975, March 3, 1975, and March 3, 1975, respectively.

disputed El Paso's statement of facts as set forth in El Paso's petition for issuance of a declaratory order herein. Gulf in its petition to intervene[2] stated that there is no Warren Petroleum Corporation because Warren Petroleum Corporation has been merged into Gulf and subsequently became Warren Petroleum Company, a division of Gulf, and that there are therefore no sales of the gas in issue between Gulf and Warren. By its answer to Gulf's petition to intervene, El Paso accepted Gulf's clarification of the facts although it did not accept Gulf's conclusions and submitted that Warren Petroleum Company should be substituted for Warren Petroleum Corporation. Therefore, there appears to be no dispute among any of the parties to the instant proceeding as to the material facts.

III.

The significant legal questions which were delineated by El Paso's petition herein, however, remain to be decided. Since the 50-year fixed term lease which is the subject of the instant proceeding expires on July 14, 1975, less than three months away, and since the Mineral Interest Owners propose to sell their share of natural gas in question to an intrastate buyer of gas[3] and consequently divert such gas from its present

[2] Petition to Intervene and Response of Gulf Oil Corporation, Docket No. CP75-209 (filed March 3, 1975).

[3] Petition to Intervene and Answer of Mineral Interest Owners to Petition for Declaratory Order, Docket No. CP75-209 (filed March 3, 1975).

movement in interstate commerce after July 14, 1975, El Paso submits that these legal issues should be decided with all deliberate speed. El Paso, therefore, proposes the following briefing schedule:

[164] Simultaneous initial briefs by all parties, including the Commission Staff, due to be filed on or before fifteen (15) days after the Commission acts upon this request.

Simultaneous reply briefs by all parties, including the Commission Staff, due to be filed on or before fifteen (15) days after the filing of initial briefs.[4]

IV.

On April 8, 1975, Texaco filed its petition for issuance of a declaratory order in this proceeding. Therein, Texaco alleged that it is in the same legal position as Exxon and the Mineral Interest Owners by reason of the fact that Texaco is a reversionary mineral interest owner of a 50-year fixed term lease similar to the 50-year fixed term lease which is the subject of El

[4] Exxon with Texaco's concurrence has requested the following briefing schedule:

Simultaneous initial briefs by all parties, including the Commission Staff, due to be filed on or before thirty days after the Commission acts upon this request.

Simultaneous reply briefs by all parties, including the Commission Staff, due to be filed on or before twenty days after the filing of initial briefs.

Answer of Exxon Corporation to Petition for Issuance of a Declaratory Order and Request for Briefing Schedule, Docket No. CP75-209 (filed March 3, 1975), and Petition of Texaco Inc. for Issuance of a Declaratory Order, Docket No. CP75-209 (filed April 8, 1975).

Paso's petition for a declaratory order herein. The lease involved in El Paso's petition covers properties located in Crane County, Texas, and expires on July 14, 1975, while the lease involved in Texaco's petition covers properties located in Ector County, Texas, and expires on August 7, 1975.[5] According to Texaco's petition, Gulf is the lessee of lease on the Ector County properties. Also according to Texaco's petition, Gulf is currently selling natural gas from the above-mentioned Ector County properties to Phillips Petroleum [165] Company (Phillips) pursuant to a casinghead gas sales contract[6] and Phillips is currently selling such gas to El Paso at the tailgate of Phillips' Goldsmith Plant[7] pursuant to Phillips' FPC Gas Rate Schedule Nos. 7, 32, 33, 497, and 483.[8]

V.

El Paso takes delivery of surplus residue gas into its pipeline system at the outlet at Phillips' Gold-

[5] A copy of this lease was attached to Texaco's petition as Exhibit "A".

[6] Phillips has informed El Paso that Gulf makes percentage-type sales to Phillips of casinghead gas produced from the acreage covered by the 50-year fixed term lease which appeared as Exhibit "A" to Texaco's petition herein.

[7] The Phillips' Goldsmith Plant is located in Ector County, Texas.

[8] The Commission granted certificates of public convenience and necessity authorizing the sale of residue gas to El Paso pursuant to Phillips' FPC Gas Rate Schedule Nos. 7, 32, 33, 483, and 497 at Docket No. G-2625, 16 F.P.C. 1440 (1956); Docket No. G-2625, 16 F.P.C. 1440 (1956); Docket No. G-3356, 16 F.P.C. 1442 (1956), amended by order issued June 12, 1961; Docket No. CI71-530 (issued April 23, 1971); and Docket No. CI72-590, 50 F.P.C. 390 (1973), supplemented by order issued July 22, 1974; respectively.

smith Plant and transports it through its jurisdictional facilities for subsequent resale in interstate commerce.[9] El Paso purchases, transports, and resells approximately 103 MMcf of such surplus residue gas daily. Approximately 18 MMcf daily of such surplus residue gas is attributable to production from wells on land in Ector County leased by Texaco and others pursuant to the 50-year fixed term lease, the subject of Texaco's petition herein.

VI.

Because the surplus residue gas produced from the 50-year fixed term lease covering the Ector County properties is presently moving in interstate commerce through El Paso's interstate pipeline system for resale, and because the provisions of the 50-year fixed term lease covering the Ector County properties are virtually identical with the provisions of the 50-year fixed term lease covering the Crane County [166] properties, El Paso submits that the Commission should resolve the legal issues raised by Texaco's petition as well as the legal issues raised by El Paso's petition. In particular the Commission's order should resolve the following questions as well as those questions raised by El Paso's petition:

(i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on August 7, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf and any other lessees under a certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Phillips for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Phillips and effectuate the transfer by reversion to Texaco and other reversionary interest owners of mineral rights under said 50-year fixed term lease?

[9] At the following docket numbers, the Commission granted El Paso certificates of public convenience and necessity for the construction and operation of pipeline and compression facilities through which El Paso transmits gas from the Phillips' Goldsmith Plant in interstate commerce: G-655, 5 F.P.C. 115 (1946); G-1019, 8 F.P.C. 726 (1949); and G-1051, 7 F.P.C. 908 (1948).

(ii) Given the facts set forth in (i), without prior Commission authorization, may Texaco and other reversionary interest owners divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?

(iii) Given the facts set forth in (i), without prior Commission authorization, may Phillips reduce its sales in interstate commerce of residue natural gas to El Paso, the pres-level of which is attributable in part to production from the lease in question?

VII.

WHEREFORE, for the foregoing reasons, El Paso Natural Gas Company hereby respectfully moves that

the Commission issue an order adopting the briefing schedule recommended in Section III, *supra*, and respectfully requests that Commission consider this answer to the petition of Texaco Inc. for issuance of a declaratory order filed in this proceeding.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

/s/ By WALTER G. HENDERSON
Walter G. Henderson
Assistant Vice President

[167]

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Counsel for
EL PASO NATURAL GAS COMPANY

Dated: April 23, 1975

[168] (VERIFICATION OMITTED IN PRINTING)

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[169] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

. . . . . .

[170] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CI75-594

TEXACO INC.

(RECEIVED APRIL 30, 1975)

Motion of Texaco Inc. to Consolidate Proceedings

Texaco Inc. (Texaco) moves that its petition for declaratory order in Docket No. CI75-594 be consolidated for briefing (if further briefing takes place), hearing (if any) and decision with *El Paso Natural Gas Company,* Docket No. CP75-209. As stated in Texaco's above-mentioned petition, the legal issue to be decided, as well as the basic factual situation, is the same as that existing in Docket No. CP75-209. By allowing consolidation, the Commission can avoid duplication of briefing and otherwise save itself and all interested parties from going through duplicative actions.

Respectfully submitted,

TEXACO INC.
Kirk W. Weinert
C. Fielding Early, Jr.
Roger L. Brandt
P.O. Box 52332
Houston, Texas 77052

By /s/ C. Fielding Early, Jr.
C. FIELDING EARLY, JR.
Attorney for Texaco, Inc.

Houston, Texas

April 28, 1975

[171] (AFFIDAVIT OMITTED IN PRINTING)

. . . . . .

[172] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

. . . . . .

[173] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CI75-594
TEXACO INC.

(RECEIVED MAY 19, 1975)

Petition of El Paso Natural Gas Company for Leave to Intervene and Answer to Motion of Texaco Inc. to Consolidate Proceedings and Answer to Petition of Texaco Inc. for Issuance of a Declaratory Order

EL PASO NATURAL GAS COMPANY ("El Paso"), pursuant to Section 15 of the Natural Gas Act and Sections 1.8, 1.9, and 1.12 of the Commission's Rules of Practice and Procedure, hereby petitions for leave to intervene, answers the motion of Texaco Inc. ("Texaco") to consolidate proceedings, and answers the petition of Texaco for issuance of a declaratory order, all in the above-styled and docketed proceeding.

In support hereof, El Paso respectfully states:

I.

The names, titles, and mailing addresses of those persons to whom correspondence and communications concerning this matter are to be addressed are as follows:

Mr. Walter G. Henderson
Assistant Vice President
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas 79978

Mr. Robert N. Harbor
El Paso Natural Gas Company
310 Suffridge Building
1775 K Street, N.W.
Washington, D.C. 20426

The exact legal name of El Paso is El Paso Natural Gas Company. It is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business located in El Paso, Texas. El Paso is a wholly-owned subsidiary of The El Paso Company, which is also a corporation duly organized and existing under the laws of the State of Delaware havings its principal place of business [174] located in Houston, Texas. El Paso is authorized to conduct business as a foreign corporation in the States of Alaska, Arizona, Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming.

II.

El Paso is a "natural-gas company" engaged in the business of producing, purchasing, transporting, and selling natural gas to distribution companies and other pipeline companies for resale and to industries and others for direct consumption. El Paso's interstate pipeline system extends from the Permian Basin area of west Texas and southeast New Mexico, the Texas-Oklahoma Panhandle area, the San Juan Basin of northwest New Mexico and southwest Colorado, and the Four Corners area of the States of Arizona, New Mexico, Utah, and Colorado, through one or more of the States of Texas, New Mexico, Utah, Colorado,

and Arizona, to points of termination at the boundary between the States of California and Arizona near Blythe, California, and Topock, Arizona, and to a point of termination at the boundary between the States of Arizona and Nevada near Big Bend, Arizona. El Paso also owns and operates an intrastate pipeline system, situated in the State of Texas, which serves consumers in the El Paso, Texas, area and fuel requirements at certain of El Paso's plants and stations on its interstate system. The gas which is the subject hereof goes into El Paso's interstate system.

III.

On April 8, 1975, Texaco filed its petition for issuance of a declaratory order in this proceeding to resolve whether a lessee, by making an interstate gas sale, can commit to that sale more than its real property interest (*i.e.*, its rights under its lease), thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act.[1] Therein, Texaco alleges that it is a reversionary mineral interest owner of a 50-year fixed term lease on properties in Ector County, Texas, and that the mineral rights shall revert to the reversionary mineral interest owners, including Texaco, on August 7, 1975, which is the date the leasehold estate expires. Texaco's petition further alleges that Gulf Oil Corporation ("Gulf") is the lessee of said 50-year fixed term lease and that Gulf is currently selling natural gas

[1] Petition of Texaco Inc. for Issuance of a Declaratory Order, Docket No. CI75-594 (filed April 8, 1975).

[175] from properties covered by said 50-year fixed term lease to Phillips Petroleum Company ("Phillips") pursuant to a casinghead gas sales contract. Also according to Texaco's petition, Phillips is currently selling such gas to El Paso at the tailgate of Phillips' Goldsmith Plant pursuant to Phillips FPC Gas Rate Schedule Nos. 7, 32, 33, 497, and 483.

On April 30, 1975, Texaco filed its motion to consolidate for briefing, hearing, and decision its petition for issuance of a declaratory order herein with the proceeding at *El Paso Natural Gas Company*, Docket No. CP75-209. By said motion to consolidate, Texaco stated that the legal issue to be decided, as well as the basic factual situation, is the same in the instant proceeding as that existing in Docket No. CP75-209.

IV.

El Paso submits that it has direct and substantial interests in this proceeding which interests are not and cannot be represented by any other party. El Paso takes delivery each day at Phillips' Goldsmith Plant of approximately 18,000,000 cubic feet of surplus residue gas attributable to production from acreage covered by the 50-year fixed term lease referred to in Texaco's petition herein. This gas is transported through El Paso's jurisdictional facilities for subsequent resale in interstate commerce. Since October 31, 1972, El Paso has been forced to curtail service from its interstate system on a virtually continuous basis because of the increasing shortage of natural gas available to El Paso. The instant proceedings will deal with the future disposition of a significant volume of natural gas. Accordingly, El

Paso desires to intervene herein in order to protect its interests and the interests of its jurisdictional customers.

V.

El Paso supports the motion of Texaco to consolidate the instant proceedings with Docket No. CP75-209. As stated by Texaco in both its petition for issuance of a declaratory order and its motion to consolidate proceedings herein, the legal issue to be decided, as well as the basic factual situation, is virtually identical to that addressed by El Paso's petition for issuance of a declaratory order which was filed in Docket No. CP75-209.[2]

[176]

VI.

El Paso has already filed at Docket No. CP75-209 on April 25, 1975, its "Motion of El Paso Natural Gas Company for Briefing Schedule and Answer to Petition of Texaco Inc. for Issuance of a Declaratory Order" responding to Texaco's petition for issuance of a declaratory order which was filed by Texaco at that docket. El Paso attaches herewith said response and incorporates and adopts said response as its answer herein at Docket No. CI75-594 to Texaco's petition.

VII.

WHEREFORE, El Paso Natural Gas Company, having an interest which will be directly affected and may

[2] Petition of El Paso Natural Gas Company for Issuance of a Declaratory Order, Docket No. CP75-209 (filed January 20, 1975).

be adversely affected by the Commission's action herein, respectfully requests that it be granted leave to intervene as a party and with all rights of a party, and, for the foregoing reasons, hereby respectfully requests that the Commission consider this answer to the motion of Texaco Inc. to consolidate proceedings and this answer to the petition of Texaco Inc. for issuance of a declaratory order. El Paso does not request that Texaco's petition be made the subject of a formal hearing but instead requests that the expedited briefing schedule suggested by El Paso's answer appended hereto be adopted.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

/s/ By Arthur R. Formanek, Jr.
ARTHUR R. FORMANEK, JR.
One of Counsel

G. Scott Cuming
General Counsel
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Counsel for

EL PASO NATURAL GAS COMPANY

Dated: May 5, 1975

[178] (VERIFICATION OMITTED IN PRINTING)

. . . . . .

[179] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

. . . . . .

[180] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

El Paso Natural Gas Company

Motion of El Paso Natural Gas Company for Briefing Schedule and Answer to Petition of Texaco Inc. for Issuance of a Declaratory Order

EL PASO NATURAL GAS COMPANY ("El Paso"), pursuant to Sections 1.9 and 1.12 of the Commission's Rules of Practice and Procedure, hereby respectfully submits its motion for briefing schedule, as hereinafter described, and its answer to the petition of Texaco Inc. ("Texaco") for issuance of a declaratory order, in the above-styled and docketed proceeding.

I.

On January 20, 1975, El Paso, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, filed with the Commission a petition for issuance of a declaratory order resolving the following questions: (i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the

Commission's Regulations under the Natural Gas Act in order to cease such sales to Warren Petroleum Corporation and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed term lease? (ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce? (iii) Given the facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

[181] II.

Southern California Gas Company ("SoCal"), Mobil Oil Corporation ("Mobil"), Southwest Gas Corporation ("Southwest Gas"), the People of the State of California and the Public Utilities Commission of the State of California ("California"), Texaco Inc. ("Texaco"), Exxon Corporation ("Exxon"), Mitchell Energy Corporation ("Mitchell"), Pacific Gas and Electric Company ("PGandE"), Gulf Oil Corporation ("Gulf"), and Mineral Interest Owners have filed petitions to intervene herein.[1] Only Gulf has

[1] Petitions to intervene by SoCal, Mobil, Southwest Gas, California, Texaco, Exxon, Mitchell, PGandE, Gulf, and Mineral Interest Owners were filed on February 6, 1975, February 10, 1975, February 14, 1975, February 18, 1975, February 19, 1975, February 25, 1975, February 28, 1975, March 3, 1975, and March 3, 1975, respectively.

disputed El Paso's statement of facts as set forth in El Paso's petition for issuance of a declaratory order herein. Gulf in its petition to intervene[2] stated that there is no Warren Petroleum Corporation because Warren Petroleum Corporation has been merged into Gulf and subsequently became Warren Petroleum Company, a division of Gulf, and that there are therefore no sales of the gas in issue between Gulf and Warren. By its answer to Gulf's petition to intervene, El Paso accepted Gulf's clarification of the facts although it did not accept Gulf's conclusions and submitted that Warren Petroleum Company should be substituted for Warren Petroleum Corporation. Therefore, there appears to be no dispute among any of the parties to the instant proceeding as to the material facts.

III.

The significant legal questions which were delineated by El Paso's petition herein, however, remain to be decided. Since the 50-year fixed term lease which is the subject of the instant proceeding expires on July 14, 1975, less than three months away, and since the Mineral Interest Owners propose to sell their share of natural gas in question to an intrastate buyer of gas[3] and consequently divert such gas from its present

[2] Petition to Intervene and Response of Gulf Oil Corporation, Docket No. CP75-209 (filed March 3, 1975).

[3] Petition to Intervene and Answer of Mineral Interest Owners to Petition for Declaratory Order, Docket No. CP75-209 (filed March 3, 1975).

movement in interstate commerce after July 14, 1975, El Paso submits that these legal issues should be decided with all deliberate speed. El Paso, therefore, proposes the following briefing schedule:

[182] Simultaneous initial briefs by all parties, including the Commission Staff, due to be filed on or before fifteen (15) days after the Commission acts upon this request.

Simultaneous reply briefs by all parties, including the Commission Staff, due to be filed on or before fifteen (15) days after the filing of initial briefs.[4]

IV.

On April 8, 1975, Texaco filed its petition for issuance of a declaratory order in this proceeding. Therein, Texaco alleged that it is in the same legal position as Exxon and the Mineral Interest Owners by reason of the fact that Texaco is a reversionary mineral interest owner of a 50-year fixed lease similar to the 50-year fixed term lease which is the subject of El

[4] Exxon with Texaco's concurrence has requested the following briefing schedule.

Simultaneous initial briefs by all parties, including the Commission Staff, due to be filed on or before thirty days after the Commission acts upon this request.

Simultaneous reply briefs by all parties, including the Commission Staff, due to be filed on or before twenty days after the filing of initial briefs.

Answer of Exxon Corporation to Petition for Issuance of a Declaratory Order and Request for Briefing Schedule, Docket No. CP75-209 (filed March 3, 1975), and Petition of Texaco Inc. for Issuance of a Declaratory Order, Docket No. CP75-209 (filed April 8, 1975).

Paso's petition for a declaratory order herein. The lease involved in El Paso's petition covers properties located in Crane County, Texas, and expires on July 14, 1975, while the lease involved in Texaco's petition covers properties located in Ector County, Texas, and expires on August 7, 1975.[5] According to Texaco's petition, Gulf is the lessee of lease on the Ector County properties. Also according to Texaco's petition, Gulf is currently selling natural gas from the above-mentioned Ector County properties to Phillips Petroleum [183] Company (Phillips) pursuant to a casinghead gas sales contract[6] and Phillips is currently selling such gas to El Paso at the tailgate of Phillips' Goldsmith Plant[7] pursuant to Phillips' FPC Rate Schedule Nos. 7, 32, 33, 497, and 483.[8]

V.

El Paso takes delivery of surplus residue gas into its pipeline system at the outlet at Phillips' Gold-

[5] A copy of this lease was attached to Texaco's petition as Exhibit "A".

[6] Phillips has informed El Paso that Gulf makes percentage-type sales to Phillips of casinghead gas produced from the acreage covered by the 50-year fixed term lease which appeared as Exhibit "A" to Texaco's petition herein.

[7] The Phillips' Goldsmith Plant is located in Ector County, Texas.

[8] The Commission granted certificates of public convenience and necessity authorizing the sale of residue gas to El Paso pursuant to Phillips' FPC Gas Rate Schedule Nos. 7, 32, 33, 483, and 497 at Docket No. G-2625, 16 F.P.C. 1440 (1956); Docket No. G-2625, 16 F.P.C. 1440 (1956); Docket No. G-3356, 16 F.P.C. 1442 (1956), amended by order issued June 12, 1961; Docket No. C171-530 (issued April 23, 1971); and Docket No. C172-590, 50 F.P.C. 390 (1973), supplemented by order issued July 22, 1974; respectively.

smith Plant and transports it through its jurisdictional facilities for subsequent resale in interstate commerce.* El Paso purchases, transports, and resells approximately 103 MMcf of such surplus residue gas daily. Approximately 18 MMcf daily of such surplus residue gas is attributable to production from wells on land in Ector County leased by Texaco and others pursuant to the 50-year fixed term lease, the subject of Texaco's petition herein.

VI.

Because the surplus residue gas produced from the 50-year fixed term lease covering the Ector County properties is presently moving in interstate commerce through El Paso's interstate pipeline system for resale, and because the provisions of the 50-year fixed term lease covering the Ector County properties are virtually identical with the provisions of the 50-year fixed term lease covering the Crane County [184] properties, El Paso submits that the Commission should resolve the legal issues raised by Texaco's petition as well as the legal issues raised by El Paso's petition. In particular the Commission's order should resolve the following questions as well as those questions raised by El Paso's petition:

(i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on August 7, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf and any other lessees under a certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Phillips for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Phillips and effectuate the transfer by reversion to Texaco and other reversionary interest owners of mineral rights under said 50-year fixed term lease?

(ii) Given the facts set forth in (i), without prior Commission authorization, may Texaco and other reversionary interest owners divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?

(iii) Given the facts set forth in (i), without prior Commission authorization, may Phillips reduce its sales in interstate commerce of residue natural gas to El Paso, the pres-level of which is attributable in part to production from the lease in question?

VII.

WHEREFORE, for the foregoing reasons, El Paso Natural Gas Company hereby respectfully moves that the Commission issue an order adopting the briefing

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*At the following docket numbers, the Commission granted El Paso certificates of public convenience and necessity for the construction and operation of pipeline and compression facilities through which El Paso transmits gas from the Phillips' Goldsmith Plant in interstate commerce: G-655, 5 F.P.C. 115 (1946); G-1019, 8 F.P.C. 726 (1949); and G-1051, 7 F.P.C. 908 (1948).

schedule recommended in Section III, *supra*, and respectfully requests that Commission consider this answer to the petition of Texaco Inc. for issuance of a declaratory order filed in this proceeding.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

/s/ By WALTER G. HENDERSON
Walter G. Henderson
Assistant Vice President

[185]

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Counsel for

EL PASO NATURAL GAS COMPANY

Dated: April 23, 1975

[186] (VERIFICATION OMITTED IN PRINTING)

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[187] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[188] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Response of Mineral Interest Owners to Motion for Briefing Schedule

Mineral Interest Owners,[1] pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure, hereby submit their response to the motion of El Paso Natural Gas Company (El Paso) for establishment of an expedited briefing schedule with respect to the questions raised in its petition for declaratory order filed in the above-mentioned proceeding. Mineral Interest Owners believe that the Commission can and should issue a decision in this case based upon the pleadings and documents heretofore filed with the Commission. However, if the Commission should determine that additional briefing is necessary, Mineral Interest Owners support El Paso's motion insofar as it proposes an expedited briefing schedule. Nevertheless, Mineral Interest Owners respectfully submit that the Commission should specify the issues to which briefs should be directed, rather than adopting the questions presented by El Paso, because El Paso's questions are clearly framed in a manner prejudicial to the rights of Mineral Interest Onwers and present an inaccurate and incomplete picture of the legal

[1] Those parties comprising Mineral Interest Owners are set forth in Exhibit A attached to the Petition to Intervene and Answer of Mineral Interest Owners to Petition for Declaratory Order, as corrected by letter dated March 5, 1975.

relationship between the parties. In support hereof, Mineral Interest Owners shows as follows:

1.

On January 20, 1975 El Paso filed a petition for declaratory order requesting resolution of three questions involving the sale of gas from certain acreage in Crane [189] County, Texas. On March 3, 1975, Mineral Interest Owners filed their petition to intervene and answer to the petition for declaratory order. Mineral Interest Owners included therein certain additional facts which El Paso had not presented to the Commission in its petition, but took the position that these facts were uncontroverted and that El Paso's petition presented strictly legal issues. Consequently, Mineral Interest Owners proposed that if the Commission did not decide the issues on the basis of the pleadings, it could and should decide the controversy without a hearing. In this regard, Mineral Interest Owners proposed a briefing schedule which would have permitted the Commission to resolve these issues at an early time. Mineral Interest Owners pointed out, however, that the questions framed by El Paso were unduly complicated, and were framed in a manner clearly prejudicial to Mineral Interest Owners and contrary to the legal relationships between the parties.

2.

On April 23, 1975, El Paso filed a motion requesting that the Commission establish an expedited briefing schedule for resolution of the three questions presented by El Paso. In its motion, El Paso agreed

that only legal questions remain to be decided and that since the 50-year fixed term lease which has given rise to this controversy expires on July 14, 1975, a speedy resolution of the issues involved is clearly desirable. Therefore, El Paso proposed the following briefing schedule:[2]

> Simultaneous initial briefs by all parties, including the Commission Staff, due to be filed on or before fifteen (15) days after the Commission acts upon this request.
>
> Simultaneous reply briefs by all parties, including the Commission Staff, due to be filed on or before fifteen (15) days after the filing of initial briefs.

[190] El Paso further proposed that issues raised by Texaco, Inc. in a petition filed in Docket No. CI75-594 should be resolved simultaneously.[3]

3.

Mineral Interest Owners fully support the position of El Paso that this case may be decided without a hearing. As set forth in its petition to intervene and answer, Mineral Interest Owners believe that the Commission can render a decision on the legal issues raised by El Paso based on the pleadings and documents attached thereto and on file with the Commission, and the materials submitted by the various parties herein. However, in the event the Commission believes that further briefing is appropriate, Mineral Interest Own-

[2] Motion for Briefing Schedule at 3.

[3] Mineral Interest Owners take no position on this question.

ers support the suggestion of El Paso that such briefing be conducted in an expedited manner on the schedule proposed by El Paso. Indeed, Mineral Interest Owners believe it is imperative that the controversy be resolved so that on July 14, 1975 there can be no question that Mineral Interest Owners have the right to dispose of the natural gas attributable to their leasehold interests to the purchaser of their choice.[4]

Nevertheless, Mineral Interest Owners submit that if additional briefing is to be required, the Commission should specify the questions on which it requests additional comment. The questions framed by El Paso in its petition for declaratory order are presented in such a manner that the real issues before the Commission are obscured. For example, with respect to Mineral Interest Owners, El Paso has suggested that the question is whether Mineral Interest Owners and other reversionary interest owners may "divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce."[5] This is not the real question [191] herein and presents a highly distorted view of the legal relationships between the parties. Mineral Interest Owners' petition to intervene and answer makes clear that no gas attributable to their interests has ever been delivered or sold in interstate commerce. Therefore, despite El Paso's attempt to suggest otherwise, there will be no

[4] Mineral Interest Owners have agreed to sell to Intratex Gas Company (Intratex) the gas attributable to the fee simple mineral estate they will hold on July 14, 1975 following termination of the existing leasehold estate.

[5] Petition for Declaratory Order at 1, 8.

"diversion" from the interstate market when Mineral Interest Owners commence their sales to Intratex. Because of this and other efforts to obfuscate the legal issues herein, it will clearly be necessary for the Commission to recast the questions presented by El Paso in a manner that will neutrally present the true issues before the Commission.

Wherefore, for the foregoing reasons, Mineral Interest Owners respectfully submit that, in the event the Commission should find further briefing by the parties necessary, the Commission should issue an order adopting the briefing schedule proposed by El Paso. In such order, the Commission should specify the issues to which briefs should be directed in a manner that will fairly state the issues before the Commission.

Respectfully submitted,

/s/ PLATT W. DAVIS III
J. EVANS ATTWELL
FRANCIS J. COLEMAN
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PLATT W. DAVIS III
WILLIAM M. SAWYER
VINSON, ELKINS, SEARLS, CONNALLY & SMITH
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Attorneys for Mineral Interest Owners

May 7, 1975

[192] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

. . . . . .

[193] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CI75-594

Texaco, Inc.

Petition to Intervene of Mineral Interest Owners

Pursuant to Section 15(a) of the Natural Gas Act, 15 U.S.C. §717n(a), and Section 1.8 of the Commission's Rules of Practice and Procedure, Mineral Interest Owners[1] hereby petition the Commission for leave to intervene in the above-captioned proceeding. In support thereof, Mineral Interest Owners respectfully show as follows:

1.

All communications concerning this petition should be addressed as follows:

J. Evans Attwell[2]
Vinson, Elkins, Searls, Connally & Smith
2548 First City National Bank Building
Houston, Texas 77002

Platt W. Davis III[2]
Vinson, Elkins, Searls, Connally & Smith
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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[1] Those parties comprising the group designated as Mineral Interest Owners are set forth in Appendix A hereto.

[2] These persons should be included on the Commission's official service list; however, it is respectfully requested that the other person designated receive service copies of all correspondence, communications, pleadings and other documents filed in or relating to this proceeding.

[194]
I. John Brumley
1600 First National Building
Fort Worth, Texas 76102

2.

Mineral Interest Owners are the owners of a reversionary mineral estate underlying acreage in Crane County, Texas. This mineral estate is presently subject to a 50-year fixed term oil and gas lease which will terminate on July 14, 1975. Upon termination of the leasehold estate, Mineral Interest Owners will hold fee simple title to their pro rata share of the mineral estate underlying the subject acreage. Mineral Interest Owners either have entered or will enter into contracts for the sale of the gas attributable to the fee simple mineral estate they will hold on July 14, 1975 to Intratex Gas Company, an intrastate buyer of gas. In Docket No. CP75-209, El Paso Natural Gas Company has filed a petition for declaratory order asserting, *inter alia*, that Mineral Interest Owners must secure Commission authorization before making this sale. Mineral Interest Owners have responded that both the interests of Mineral Interest Owners and the sale to Intratex are non-jurisdictional and that the Commission has no authority to review these transactions.

3.

On April 8, 1975, Texaco, Inc. (Texaco) filed in the above-captioned proceeding a petition for declaratory order to resolve the question "whether a lessee, by making an interstate gas sale, can commit more than it real property interest (i.e., its rights under

its lease), thereby encumbering forever the real estate and imposing upon the non-participating mineral fee owner the obligations of Section 7 of the Natural Gas Act." Among other things, Texaco asserts that this question has arisen because of its ownership of a reversionary mineral estate in land which is presently subject to a 50-year fixed term lease which will expire on August 7, 1975. Referring to the pleadings in Docket No. CP75-209, Texaco claims that its situation is identical to that of Mineral Interest Owners.

[195] 4.

Mineral Interest Owners have a substantial and vital interest in the outcome of this proceeding and desire to intervene in order to protect that interest. Mineral Interest Owners are interested parties in this proceeding within the meaning of Section 15(a) of the Natural Gas Act, 15 U.S.C. 717n(a), and its intervention and participation in this proceeding will be in the public interest. Mineral Interest Owners are not now, and will not be, adequately represented by any other party to this proceeding, and may be bound or adversely affected by the Commission's action herein.

Wherefore, for the foregoing reasons, Mineral Interest Owners respectfully request that the Commission issue an order granting it leave to intervene and admitting it as a party to this proceeding with the right to have notice of and appear at all hearings and prehearing conferences, to produce evidence and present witnesses, to be heard by counsel and other representatives, to submit briefs, to make oral argument,

if oral argument be heard, and to do all things which any party may properly do.

Respectfully submitted,

/s/ Platt W. Davis III
J. Evans Attwell
Francis J. Coleman
First City National Bank Building
Houston, Texas 77002

Platt W. Davis III
William M. Sawyer
Vinson, Elkins, Searls, Connally & Smith
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Attorneys for Mineral Interest Owners

May 12, 1975

[196] APPENDIX A

Mineral Interest Owners

Percentage Ownership of Mineral Estate

(Calculated on Acreage Basis)

	% Ownership
Southland Royalty Company	47.0
William Y. Penn, *et al.*, Trustees, Nancy Elizabeth Penson, Penn Resources, Inc., Elizabeth Hudson Penn	8.6
Trustees Under the Will of Warren Wright, Deceased	25.7
Total Mineral Interest Owners	81.3
Other Mineral Owners	18.7
TOTAL	100.0

[197] (Verification Omitted in Printing)

• • • • • • • • • • •

[198] (Certificate of Service Omitted in Printing)

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[199] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CI75-594

Texaco Inc.

(Received May 12, 1975)

Petition to Intervene and Response of Gulf Oil Corporation to Petition of Texaco Inc. for a Declaratory Order

Comes Now Gulf Oil Corporation (Gulf) and files this its Petition to Intervene and Response to the Petition of Texaco Inc. (Texaco) for issuance of a Declaratory Order in the above proceeding. Texaco's Petition was originally filed in El Paso Natural Gas Company Docket No. CP75-209, but was redesignated as styled above by the Commission in its Notice of Petition for Declaratory Order issued April 22, 1975.

I.

Mailing Address

All correspondence and communications concerning this matter should be addressed to:

B. James McGraw, Attorney
Warren M. Sparks, Attorney
Gulf Oil Corporation
P.O. Box 1589
Tulsa, Oklahoma 74102

II.

Gulf is a corporation organized under the laws of the State of Pennsylvania and authorized to do business in the State of Texas and elsewhere.

[200]

III.

Petition to Intervene

Gulf is the owner of the fixed term oil and gas lease referred to in Texaco's Petition and attached thereto as Exhibit "A". As such, Gulf is the owner of the gas produced from said lease and sold to Phillips Petroleum Company (Phillips), the residue gas from which is sold by Phillips to El Paso Natural Gas Company (El Paso). Gulf is therefore an essential party to any action the Commission may take in this proceeding. Gulf moves to intervene in this proceeding and to participate in all phases thereof, including the presentation of testimony and the cross-examination of witnesses in the event of a hearing.

IV.

Statement of Position

It is Gulf's position that the facts and circumstances of this case do not require it to obtain any abandonment authorization from the Commission.

V.

The Facts

Texaco's Petition correctly states that Texaco is one of the reversionary mineral owners of the minerals in properties in Ector County, Texas, which were described in and leased to Gulf pursuant to an oil and gas lease, a copy of which is attached as Exhibit "A" to Texaco's Petition. This lease will expire as to Texaco's interest at midnight on August 7, 1975, at which time Texaco will become the owner of an

unleased one-fourth mineral interest under the lands described [201] therein. Texaco acquired its mineral fee pursuant to a mineral deed dated May 4, 1962, a copy of which it attached as Exhibit "B" to Texaco's Petition.

Gulf is currently selling casinghead gas produced from the lands described in the fixed term lease to Phillips, pursuant to the terms of a percentage type Casinghead Gas Contract dated November 9, 1971, a copy of which, marked Exhibit "A", is attached hereto and incorporated herein. Gulf is informed and believes that Phillips processes said gas at its Goldsmith Plant in Ector County, Texas, and sells the surplus residue gas to El Paso through various Phillips Rate Schedules. Texaco is not a party to Gulf's Casinghead Gas Contract with Phillips.

VI.

On the basis of the above facts Gulf agrees that Texaco has the same legal position as Exxon and the Mineral Interest Owners (MIO) as described in the pleadings of said parties filed in Docket No. CP75-209.

Upon termination of the lease as to Texaco's interest on August 7, 1975, Gulf will have no right, title or interest to any gas produced from or attributable to the fee mineral interest estate of Texaco. Prior to termination of the fixed term lease no sales will have been made of gas attribuable to the fee simple mineral estate of Texaco, and consequently no gas attributable to that interest could have been previously dedicated to the interstate market. Accord-

ingly, Gulf need obtain no Section 7(b) abandonment authorization upon termination of said [202] fixed term lease. *El Paso Natural Gas* v. *Perry R. Bass*, 48 FPC 1269 (1972).

VII.

No Need For Hearing

Gulf agrees that there are no disputed facts, and that the legal questions involved in this proceeding, as well as in Docket No. CP75-209, should be determined by the Commission on briefs. Time is of the essence, so that all parties, including Gulf, may be advised of their legal rights before the termination of the leases. The lease involved in the El Paso proceeding terminates July 14, 1975, and the lease in this proceeding on August 7, 1975. Gulf therefore supports the briefing schedule suggested by Exxon on page 5 of its Answer in Docket CP75-209, calling for simultaneous briefs of all parties to be due 30 days after the Commission acts on Exxon's request, and simultaneous reply briefs by all parties within 20 days after the due date for initial briefs.

VIII.

Conclusion

It is submitted that (1) Gulf's petition to intervene in this proceeding should be granted; and (2) no abandonment authorization under Section 7(b) of the Natural Gas Act may be secured by Gulf.

Respectfully submitted,

/s/ Warren M. Sparks
Warren M. Sparks
B. James McGraw

Attorneys for Gulf Oil Corporation
P.O. Box 1589
Tulsa, Oklahoma 74102

[203] (Affidavit Omitted in Printing)

. . . . . .

[204] (Certificate of Service Omitted in Printing)

. . . . . .

[205]

. . . . . .

Form 3269 CH-T 1-71—37370-D

GOLDSMITH PLANT
#10-C, 11-C and 34-D

CASINGHEAD GAS CONTRACT

206
[206]

THIS CONTRACT entered into this 9th day of November, 1971
between GULF OIL CORPORATION
, "Seller", and PHILLIPS PETROLEUM COMPANY, "Buyer":

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller casinghead gas produced from wells now or hereafter located on the following described land in Andrews and Ector Counties, State of Texas, to wit:

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#34 - C. A. Goldsmith et al., Lease No. 11030 - Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 33, 34, 35, 38, 39, 40, 45, 46 and 47, All in Block 44, Township 1 South, T&P Ry. Co. Lands; (all casinghead gas produced from the Goldsmith San Andres Unit is specifically excepted herefrom)

State "AU" Lease No. 16680 - N/2 of Section 33, Block 11, University Lands;

R. B. Cowden et al., Lease No. 14833 - N/2 NE/4 Section 3, Block 45, Township 1 North, T&P Ry. Co. Lands;

E/2 of NW/4 of Section 9, Block 45, Township 2N, T&P Ry. Co. Survey;

#10 & #11 - Scharbauer "D" - S/2 of SW/4 Section 34, Block 44, Township 1 North, T&P Ry. Co. Lands;

Scharbauer "B" - N/2 of SW/4 Section 29, Block 44, Township 1 North, T&P Ry. Co. Lands.

1. DELIVERY AND TRANSFER OF TITLE—The gas shall be delivered at the casingheads of the wells or at any other point or points of separation of oil and gas. Upon delivery, title to the gas and all components thereof shall pass to and vest in Buyer without warranty of any kind by Seller, except that Seller warrants the gas delivered hereunder to be free from liens and adverse claims created by it or arising through operations conducted prior to delivery hereunder. Seller may use any residual shrinkage, and the taking of casinghead gas by Buyer shall be subordinate to said operations.

2. DELIVERY DATE—Delivery of the gas shall begin November 1, 1971 or such earlier date as Buyer may elect to accept delivery by said date and shall obligate Buyer to pay, as full consideration for the volumes of gas delivered hereunder, the price stated in the agreement specified and not taken by Buyer, the "Base In Casis Per Thousand Cubic Feet" shown in the attached TABLE II applicable to the well producing the gas, provided, however, that during the first [illegible] months of the term hereof, Buyer's obligation to take and pay for gas produced shall be deferred by the provisions of Paragraph 3 hereof. In the event Buyer fails to accept delivery of gas within [illegible] months from the aforesaid delivery date, either party hereto may thereafter terminate this contract as may then another 10 days' written notice to the other unless Buyer commences taking gas within said 10 day period.

3. TAXES—After the commencement of actual taking of gas Buyer agrees to take all gas coming more than three-fourths gallons of gasoline per thousand cubic feet. However, it is understood that Buyer may process the gas delivered in a plant or plants and that gas processed from gasoline per thousand cubic feet. However, it is understood that Buyer may process the gas delivered in a plant or plants and that gas processed from limited from other properties may also be processed in any such plant, and in the event Buyer's plant or gathering system is of insufficient capacity to gather and process all of the gas covered thereby, Buyer shall be obligated only to take gas ratably from all leases delivering commingled gas to the gathering system into which Seller's gas is delivered. Buyer shall have the option of installing such quantity of gas compressing facilities, gasoline or [illegible] as may be necessary to take the gas delivered hereunder, but Seller shall have the right to dispose of any gas not taken or paid for by Buyer, subject to Buyer's right to take such gas at any subsequent time. In the event the gas from any well or wells is or becomes insufficient in pressure, volume or gasoline content or for any other reason is or becomes unprofitable, in the judgment of Buyer, Buyer shall have the right to release or cease taking the gas from any such well or wells as long as such condition exists or may reasonably thereafter exist upon 10 days' notice in writing to Seller.

4. MEASUREMENT—The casinghead gas delivered hereunder shall be measured by an orifice meter or meters of standard make or be furnished, installed and kept in repair by Buyer, on the land herein described and all volumes of such gas shall be computed to a standard cubic foot as a pressure base of 14.65 pounds per square inch absolute and at a temperature base of 60 degrees Fahrenheit. In making such measurements, the flowing temperature of the gas and the variable factors necessary to calculate the metered volumes in accordance with the Ideal Gas Laws and the variable factors to correct for deviation from the Ideal Gas Laws shall be in accordance with rules, regulations and determinations of the Railroad Commission of Texas. The specific gravity shall be determined quarterly by the Balance Method. Said meter shall be open to inspection by Seller at the premises of Buyer. Buyer shall test said meter quarterly for accuracy of measurement. In case any question arises as to the accuracy of the meter measurements, said meter shall be tested upon the demand of either party, and if any error found, the meter shall be corrected. A registration within 2 per cent of correct shall be considered correct. The volume delivered for any period of inaccurate measurement shall be determined by using an arithmetic average daily volume based upon said measured volume for 10 days prior to and 10 days following the period of inaccurate measurement.

5. GAS FOR LEASE OPERATION—Buyer shall not be required to return to Seller's lease or leases raw or processed gas for lease development and operating purposes. If Seller desires gas for such purposes, then Seller may either use raw gas produced from the wells delivering gas hereunder, so long as such gas is taken from the upstream side of Buyer's meter, or take processed gas from the outlet point or [illegible] gas stream (if any) provided, however, that Buyer may at any time elect to return processed gas to Seller's lease or leases and in such event Seller shall use such processed gas in lieu of gas taken from the upstream side of Buyer's meter. The volume of processed gas to which Seller is entitled shall not exceed in the aggregate that volume of gas determined by multiplying the volume of raw gas produced and delivered during the settlement period from each lease by the applicable "Per Cent" figure in TABLE I. Buyer shall be under no obligation to deliver such gas at gauge pressure in excess of 15 pounds per square inch. In the event Buyer delivers and Seller accepts gas in excess of the volume of gas to which Seller is entitled for lease development and operations, Seller shall pay Buyer for such excess gas delivered during any calendar month (the volume determined by estimate or measurement) at the [illegible] per thousand cubic feet [illegible] lease development and operations is insufficient for such purposes, Seller reserves the right to use raw gas from Seller's wells sufficient for such purposes. Buyer shall not be obligated to process gas for Seller's account.

6. TEST GASOLINE CONTENT—Quarterly, Buyer shall make a physical field test of the gas delivered hereunder and determine thereby the test gasoline content of the gas per thousand cubic feet which is to be used during the succeeding quarterly period in the computations under Paragraphs 2, 3, 5 and 7. Such physical field tests shall be made by a field charcoal adsorption test, or at Seller's option by a field compression test, in accordance with Testing Code 101-43 adopted by the American Gas Association and the Natural Gas Processors Association. Buyer shall notify Seller in writing of the date of taking the quarterly tests at least 10 days prior thereto. Seller may witness the tests or make joint tests with its own appliances. The volume of gas used in making the test shall be computed to a base pressure of 14.65 pounds per square inch absolute and at a temperature base of 60 degrees Fahrenheit in computing the net gasoline content per thousand cubic feet.

7. PRICE—As full consideration for the gas and all components thereof purchased by Buyer hereunder, Buyer shall pay Seller a price which shall be the sum of the computations prescribed in A and B below:

A. Multiply the volume of gas delivered by the applicable "Base In Cash Per Thousand Cubic Feet" shown in TABLE II as amended in accordance with the provisions of (1), (2) and (3) below.

(1). In the event the total net gasoline content of all of the gas processed in Buyer's plant during the month equals or exceeds a daily average of 10,000 net gallons, the applicable "Base In Cash Per Thousand Cubic Feet", shown in TABLE II, shall be increased in accordance with the following schedule:

Daily Average Gallons of Net Gasoline Content per Mcf Processed in the Plant During the Month	Percentage of Increase
10,000 but less than 20,000	10%
20,000 but less than 30,000	20%
30,000 but less than 40,000	30%
40,000 and more	40%

(2) In the event the gas is delivered during any month at an average daily gauge pressure exceeding 50 pounds per square inch, as measured by the static pressure on the meter chart, add an additional .1340¢ to the applicable "Base In Cash Per Thousand Cubic Feet" shown in TABLE II.

EXHIBIT "A"

(3) In the event the weighted average of the daily A.P.I. gravities of all raw unfractionated gasoline manufactured during the settlement period at the plant at which the gas purchased hereunder is processed exceeds 93, the applicable "Rate In Cents Per Thousand Cubic Feet" shown in TABLE II shall be increased by the amount obtained by multiplying the "Price of Gasoline in Cents per Gallon", determined as provided in the Note to TABLE II, by the raw gasoline contents per thousand cubic feet of the gas delivered hereunder times one-half of one per cent for each full degree that such weighted average A.P.I. gravity exceeds 93 (and a proportionate additional amount for any fractional parts of a degree). The arithmetic average of the gravities of all such gasoline produced during any twenty-four hours day shall be deemed the gravity of all such gasoline manufactured during such day. A.P.I. gravity shall be as defined by U. S. Department of Commerce, Bureau of Standards Circular C410.

The A.P.I. gravity of the raw unfractionated gasoline manufactured at such plant shall be determined by a recording gravitometer, the accuracy of which shall be checked at least once each month. Seller shall be entitled to be present at such tests and, upon written request to Buyer, shall be notified when such tests will be made. A recording within five-tenths of one degree of the correct A.P.I. gravity shall be considered correct. Settlement for any period of inoperation or of inaccurate recording shall be in accordance with the average readings taken during the last preceding 5 days when the gravitometer was recording accurately and the first 5 days after the gravitometer was restored to accuracy.

seventy percent (70%) of the price per thousand cubic feet

B. Multiply the volume of gas sold allocable to Seller by [illegible] Buyer receives under the Sales Contract, adjusted as hereinafter provided, for the sale of gas of the same pricing vintage as gas delivered hereunder.

1. DEFINITIONS—The term "casinghead gas" means gas arising from oil wells produced from the same sand or strata from which the oil is produced or as the result of the induction of gas by any method for facilitating or increasing the production of the oil, and gas separated from oil after production.

The term "Sales Contract" as used herein shall mean that certain contract dated January 1, 1953, between El Paso Natural Gas Company and Phillips Petroleum Company covering the purchase of gas from Phillips' Goldsmith Plant in Ector County, Texas. The price per thousand cubic feet Buyer receives under the "Sales Contract" is, or may be, subject to regulation by the Federal Power Commission. The phrase "price per thousand cubic feet Buyer receives," as used in this contract, shall mean only that portion of the price exclusive of any tax reimbursement then being collected by Buyer under the Sales Contract which is not subject to possible future refund by Buyer. If Buyer is later determined to be entitled to retain all or part of the amount collected subject to refund and is relieved from all further obligation to refund with respect thereto, Buyer shall retroactively recalculate the price payable hereunder and shall pay Seller the difference, without interest, between the amount previously paid Seller hereunder and the amount which would have been payable based on the price which Buyer is so permitted to retain. The "price per thousand cubic feet Buyer receives" shall be adjusted as follows. Any amount received from the purchaser for transportation, purification, dehydration or compression prior to delivery shall be deemed to be a part of the price received by Buyer. If any of the gas so sold is compressed (either before or after being processed in Buyer's plant) and delivered at an average gauge pressure in excess of 50 pounds per square inch, there shall be deducted from the price received from such sale .1786¢ per thousand cubic feet for each 25 pounds or fraction thereof of the excess between the foregoing specified average gauge pressure and the lesser of either the delivery pressure or 200 pounds per square inch and, if the delivery pressure exceeds 200 pounds per square inch, an additional .1786¢ per thousand cubic feet for each 100 pounds or fraction thereof of the excess between 200 pounds per square inch and the delivery pressure. If any of the gas so sold is purified prior to its delivery there shall be deducted from the price received from such sale the cost of purifying such gas. From the price received from the sale of any such gas which is dehydrated prior to its delivery there shall be deducted .1340¢ per thousand cubic feet. In the event Buyer transports the gas from the plant to the point of delivery to the purchaser, there shall also be deducted from the price per thousand cubic feet received from such sale the reasonable cost, including return on depreciated investment, of such transportation.

The phrase "weighted average price per thousand cubic feet" shall mean the weighted average price received by Buyer and its subsidiaries for all gas connected to Buyer's plant which was sold either prior to processing or after discharge in the form of gas from the equipment at the plant used for the manufacture of raw unfractionated gasoline, adjusted as hereinafter provided. Any amount received from the purchaser for transportation, purification, dehydration or compression prior to delivery shall be deemed to be a part of the price received by Buyer. If any of the gas so sold is compressed (either before or after being processed in Buyer's plant) and delivered at an average gauge pressure in excess of _____ pounds per square inch, there shall be deducted from the price received from such sale .1786¢ per thousand cubic feet for each 25 pounds or fraction thereof of the excess between the foregoing specified average gauge pressure and the lesser of either the delivery pressure or 200 pounds per square inch and, if the delivery pressure exceeds 200 pounds per square inch, an additional .1786¢ per thousand cubic feet for each 100 pounds or fraction thereof of the excess between 200 pounds per square inch and the delivery pressure. If any of the gas so sold is purified prior to its delivery there shall be deducted from the price received from such sale _____¢ per thousand cubic feet when the daily average volume of all gas purified during the month is less than 5,597,000 cubic feet, _____¢ per thousand cubic feet when the daily average of all gas purified during the month equals or exceeds 5,597,000 cubic feet but is less than 22,389,000 cubic feet and _____¢ per thousand cubic feet when the daily average volume of all gas purified during the month equals or exceeds 22,389,000 cubic feet. From the price received from the sale of any such gas which is dehydrated prior to its delivery there shall be deducted .1340¢ per thousand cubic feet. In the event Buyer transports the gas from the plant to the point of delivery to the purchaser, there shall also be deducted from the price per thousand cubic feet received from such sale the reasonable cost, including return on depreciated investment, of such transportation.

Weighting shall be limited to volume and price only. In computing said weighted average price the volume of gas shall be measured on the basis of measurement provided in Paragraph 4.

~~The term "subsidiaries" shall mean corporations of which owning stock Buyer owns more than 50 per cent.~~

The volume of gas (determined by estimate or measurement) that was delivered to Seller for lease operation shall be deducted from the volume which Seller was entitled to have delivered for such purpose. The volume remaining shall be the numerator of a fraction, the denominator of which shall be the total of the volumes so remaining from all gas delivered to Buyer's plant, determined in the same manner. The "volume of gas sold allocable to Seller", as used in this contract, shall be determined by multiplying the above fraction by the total volume of the gas connected to Buyer's plant which was sold, during the month for which settlement is made, either prior to processing or after discharge in the form of gas from the equipment at the plant used for the manufacture of raw unfractionated gasoline.

~~Any use by Buyer or its subsidiaries of processed gas or of unprocessed gas taken into the gathering system connected to the plant, except that required for operation of Buyer's plant and other facilities used in connection with gathering the gas or processing the raw unfractionated gasoline, and except that delivered for development and operation of Buyer's leases furnishing gas to the plant (the last excepted volume not to exceed the volume which Buyer would be entitled to have delivered for such purposes determined by the method prescribed in Paragraph 3 hereof), shall be deemed to be a sale of such gas. For the purpose of determining hereunder the gas deemed so sold shall be priced at the weighted average price per thousand cubic feet during the month preceding that for which settlement is made.~~

The term "plant", as used in this contract, is defined to be all equipment located in one yard used by Buyer for the manufacture of raw unfractionated gasoline. Equipment used by Buyer for fractionating the raw unfractionated gasoline shall not be considered a part of Buyer's plant. In the event Buyer has no equipment for distilling the raw unfractionated gasoline from the absorption oil in the same plant yard with its absorption equipment, the equipment in such plant yard, including the absorbers, shall nevertheless constitute a "plant" for all purposes of this contract except payment under subdivision A (3) of Paragraph 7. For payment under this subdivision where the raw unfractionated gasoline from more than one plant as above defined is distilled in the same equipment the gravity of the combined raw unfractionated gasoline shall be used. In the event the gas delivered hereunder is processed in more than one plant Buyer shall allocate such gas to each plant in the proportion that each plant receives gas from the common source.

9. PAYMENT—Payment for all gas delivered each month shall be made not later than the last day of the succeeding month. A statement showing the volume of gas purchased and the price computations under Paragraph 7 shall be transmitted monthly to Seller with the exception that, in respect of the weighted average price per thousand cubic feet, only the result of the computation need be shown. Seller shall have the right to examine the books and records of Buyer which pertain to the basis of payment for gas hereunder at Buyer's office at Bartlesville, Oklahoma, during regular office hours. Buyer need not preserve the books and records pertaining to payment for gas purchased during any month for longer than 2 years after payment therefor has been tendered.

10. TITLE—Seller warrants the title to the gas. ~~Upon request Seller shall furnish Buyer abstracts of title and Buyer shall not be required to make payment until Seller shall have furnished such abstracts covering the land described showing good and merchantable title to the gas. If Seller's title is questioned or involved in litigation, Buyer shall have the right to withhold payment without interest during the pendency of such litigation, or until said title is found free from such question, or until Seller furnishes bond conditioned to save Buyer harmless with surety acceptable to Buyer.~~ Without impairment of Seller's warranty of title, it is agreed that if Seller owns less than the full fee simple title to the gas delivered hereunder, the payments provided for herein shall be made only in the proportion that Seller's interest bears to the entire fee simple title of the gas.

11. ROYALTY—Seller agrees to make all payments accruing from the production and sale of gas hereunder to the owners of all royalties, overriding royalties, bonus payments and production payments and to hold Buyer harmless therefrom.

12. RIGHT OF WAY—Insofar as Seller's lease permits, Buyer is granted the right to lay and maintain lines and install any equipment on the land described necessary in connection with the purchase of Seller's gas and shall have the right of free entry thereon during the term of this contract. All lines and other equipment placed by Buyer on said land shall remain the property of Buyer and may be removed by Buyer at any time.

13. LAWS AND REGULATIONS—This contract shall be subject to all valid statutes and rules and regulations of any duly constituted federal or state regulatory body having jurisdiction.

14. FORCE MAJEURE—Neither party shall be liable for failure of performance due to labor controversies, fires, strikes, floods, lack of water, winds, lightning, accidents, or any other circumstances beyond the control of the party failing to perform whether of a similar or dissimilar nature.

15. TERM—This contract shall remain in effect for the life of the oil and gas lease covering the land described or any extensions or renewals thereof; provided, that either party shall have the right to terminate this contract at the expiration of ten (10) years from the date hereof or on any subsequent anniversary date by giving the other party 60 days' notice in writing.

16. ASSIGNMENT—This contract may be assigned by either party. No transfer of or succession to the interest of Seller, however effected, shall bind Buyer until the original instrument or other proper proof that the claimant is legally entitled to such interest shall have been furnished Buyer at its office in Bartlesville, Oklahoma.

17. COUNTERPART—This contract may be executed in any number of counterparts, all of which shall be considered together as one instrument, and this contract shall be binding upon all parties executing same, whether or not executed by all parties owning an interest in the above properties.

18. TERMINATION OF PRIOR CONTRACTS AND RELEASE—This contract terminates and supersedes any prior contracts between the parties hereto to the extent that such contracts cover the purchase and sale of gas covered by this agreement. In consideration of the covenants herein contained, Seller hereby acknowledges payment in full by Buyer of all sums owed Seller by Buyer for gas, whether from an oil well or gas well, produced from the land above described prior to the date of this contract, and hereby releases and waives all causes of action therefor.

IN WITNESS WHEREOF, the parties hereunto subscribed their names.

GULF OIL CORPORATION, By its Agent
MARLIN PETROLEUM CORPORATION

ATTEST:

Brian C. Hardin
Assistant Secretary

By: W. A. Shallabear
Vice President

Seller

ATTEST:

Assistant Secretary

PHILLIPS PETROLEUM COMPANY

By: LeRoy Culbertson
Vice President

Buyer

L. P. BIRK
GAS & GAS LIQUIDS

Corporate Form

STATE OF OKLAHOMA }
COUNTY OF WASHINGTON } ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this 22nd day of December, 1971, personally appeared LeRoy Culbertson, to me known to be the identical person who subscribed the name of PHILLIPS PETROLEUM COMPANY to the within and foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses, purposes and consideration therein expressed and set forth.

Given under my hand and seal of office the day and year last above written.

My commission expires:
June 14, 1975

Dorothy M. Hunt
Notary Public
Dorothy M. Hunt

Corporate Form

STATE OF OKLAHOMA }
COUNTY OF TULSA } ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this 6th day of December, 1971, personally appeared W. A. Shallabear, to me known to be the identical person who subscribed the name of Warren Petroleum Corporation, as Agent for Gulf Oil Corporation to the within and foregoing instrument as its Vice President, and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses, purposes and consideration therein expressed and set forth.

Given under my hand and seal of office the day and year last above written.

My commission expires:
October 6, 1974

Alan McEgan
Notary Public

Corporate Form

STATE OF _____ }
COUNTY OF _____ } ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this _____ day of _____, 19____, personally appeared _____, to me known to be the identical person who subscribed the name of _____ to the within and foregoing instruments as its _____ and duly acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses, purposes and consideration therein expressed and set forth.

Given under my hand and seal of office the day and year last above written.

My commission expires:

_____
Notary Public

Individual Form

STATE OF _____ }
COUNTY OF _____ } ss.

Before me, the undersigned, a Notary Public within and for said County and State, on this _____ day of _____, 19____, personally appeared _____, to me known to be the identical person who executed the within and foregoing instruments, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses, purposes and consideration therein expressed and set forth.

Given under my hand and seal of office the day and year last above written.

My commission expires:

_____
Notary Public

TABLE I

GPM	Per Cent	GPM	Per Cent	GPM	Per Cent	GPM	Per Cent	GPM	Per Cent
.25 or less	91.05	2.20	71.00	4.15	52.95	6.10	37.50	8.05	24.80
.30	90.50	2.25	70.50	4.20	52.50	6.15	37.20	8.10	24.50
.35	90.05	2.30	70.10	4.25	52.15	6.20	36.90	8.15	24.25
.40	89.60	2.35	69.60	4.30	51.80	6.25	36.55	8.20	24.00
.45	89.00	2.40	69.10	4.35	51.30	6.30	36.20	8.25	23.65
.50	88.60	2.45	68.65	4.40	50.80	6.35	35.80	8.30	23.30
.55	87.85	2.50	68.20	4.45	50.40	6.40	35.40	8.35	22.95
.60	87.30	2.55	67.70	4.50	50.00	6.45	35.10	8.40	22.60
.65	86.80	2.60	67.20	4.55	49.65	6.50	34.80	8.45	22.30
.70	86.30	2.65	66.70	4.60	49.30	6.55	34.45	8.50	22.00
.75	85.75	2.70	66.20	4.65	48.85	6.60	34.10	8.55	21.70
.80	85.20	2.75	65.75	4.70	48.40	6.65	33.85	8.60	21.40
.85	84.70	2.80	65.30	4.75	47.95	6.70	33.50	8.65	21.10
.90	84.20	2.85	64.90	4.80	47.50	6.75	33.15	8.70	20.80
.95	83.65	2.90	64.50	4.85	47.15	6.80	32.80	8.75	20.55
1.00	83.10	2.95	63.95	4.90	46.80	6.85	32.50	8.80	20.30
1.05	82.50	3.00	63.40	4.95	46.35	6.90	32.20	8.85	20.05
1.10	81.90	3.05	62.95	5.00	45.90	6.95	31.85	8.90	19.80
1.15	81.40	3.10	62.50	5.05	45.50	7.00	31.50	8.95	19.50
1.20	80.90	3.15	62.00	5.10	45.10	7.05	31.15	9.00	19.20
1.25	80.40	3.20	61.50	5.15	44.75	7.10	30.80	9.05	18.85
1.30	79.90	3.25	61.00	5.20	44.20	7.15	30.50	9.10	18.50
1.35	79.45	3.30	60.50	5.25	43.85	7.20	30.20	9.15	18.20
1.40	79.00	3.35	60.15	5.30	43.50	7.25	29.85	9.20	17.90
1.45	78.50	3.40	59.80	5.35	43.05	7.30	29.50	9.25	17.60
1.50	78.00	3.45	59.30	5.40	42.60	7.35	29.25	9.30	17.30
1.55	77.50	3.50	58.80	5.45	42.25	7.40	29.00	9.35	17.05
1.60	77.00	3.55	58.35	5.50	41.90	7.45	28.65	9.40	16.80
1.65	76.50	3.60	57.90	5.55	41.35	7.50	28.30	9.45	16.50
1.70	76.00	3.65	57.40	5.60	41.20	7.55	28.00	9.50	16.20
1.75	75.50	3.70	56.90	5.65	40.80	7.60	27.70	9.55	16.00
1.80	75.00	3.75	56.55	5.70	40.40	7.65	27.30	9.60	15.80
1.85	74.50	3.80	56.20	5.75	40.15	7.70	26.90	9.65	15.50
1.90	74.00	3.85	55.75	5.80	39.90	7.75	26.70	9.70	15.20
1.95	73.45	3.90	55.30	5.85	39.50	7.80	26.50	9.75	14.95
2.00	72.90	3.95	54.80	5.90	39.10	7.85	26.20	9.80	14.70
2.05	72.45	4.00	54.30	5.95	38.70	7.90	25.90	9.85	14.45
2.10	72.00	4.05	53.85	6.00	38.30	7.95	25.50	9.90	14.20
2.15	71.50	4.10	53.40	6.05	37.90	8.00	25.10	9.95 and over	13.95

Note to TABLE I: The "Per Cent" in the table opposite the "GPM" corresponding to the test gasoline content of the gas delivered (subject to adjustment as provided in the following paragraph), multiplied by the volume of gas delivered by Seller during the settlement period, shall be the volume of gas Seller is entitled to have delivered for lease development and operation.

In the event the A.P.I. gravity of the raw unfractionated gasoline (determined in accordance with subdivision A (3) of Paragraph 7) exceeds 93, the following deductions shall be made from the applicable "Per Cent" in the above table:

(a) 0.3% for each full degree that such gravity exceeds 93 when the gas delivered tests 1 gallon or less per thousand cubic feet,
(b) 0.2% for each full degree that such gravity exceeds 93 when the gas delivered tests more than 1 gallon but not more than 2 gallons per thousand cubic feet,
(c) 0.1% for each full degree that such gravity exceeds 93 when the gas delivered tests more than 2 gallons but less than 3 gallons per thousand cubic feet.
(d) No deduction shall be made when the gas delivered tests 3 gallons or more per thousand cubic feet.

TABLE II

Test Gasoline Contents in Gallons per 1,000 Cu. Ft. of Gas	.0 to .447	.447 to .893	.893 to 1.340	1.340 to 1.787	1.787 to 2.233	2.233 to 2.680	2.680 to 3.127	3.127 to 3.573	3.573 to 4.020	4.020 to 4.466	4.466 to 4.913	4.913 to 5.360	5.360 to 5.806	5.806 to 6.253
Price of Gasoline in Cents per Gallon	RATE IN CENTS PER THOUSAND CUBIC FEET													
Less than 2.0¢	.05	.11	.26	.40	.59	.86	1.11	1.33	1.50	1.68	1.85	2.02	2.20	2.38
2.0 to 2.5	.08	.17	.34	.56	.83	1.19	1.51	1.89	2.14	2.39	2.64	2.89	3.15	3.40
2.5 to 3.0	.10	.23	.44	.73	1.08	1.48	1.95	2.43	2.73	3.07	3.39	3.71	4.03	4.36
3.0 to 3.5	.14	.29	.58	.93	1.35	1.85	2.43	3.00	3.40	3.80	4.19	4.60	5.00	5.39
3.5 to 4.0	.17	.36	.71	1.14	1.66	2.25	2.93	3.61	4.10	4.58	5.06	5.54	6.03	6.51
4.0 to 4.5	.21	.45	.86	1.37	1.98	2.68	3.48	4.36	5.33	6.02	6.65	7.29	7.91	8.54
4.5 to 5.0	.26	.54	1.03	1.63	2.36	3.14	4.06	5.08	6.02	6.72	7.43	8.13	8.85	9.55
5.0 to 5.5	.31	.64	1.21	1.91	2.71	3.63	4.68	5.83	6.65	7.43	8.21	8.99	9.78	10.55
5.5 to 6.0	.36	.76	1.41	2.19	3.11	4.16	5.33	6.43	7.29	8.13	8.99	9.85	10.71	11.56
6.0 to 6.5	.42	.87	1.62	2.51	3.54	4.70	6.02	6.98	7.91	8.85	9.78	10.71	11.64	12.56
6.5 to 7.0	.49	1.00	1.85	2.85	3.99	5.29	6.53	7.54	8.54	9.55	10.55	11.56	12.56	13.57
7.0 to 7.5	.56	1.13	2.08	3.19	4.47	5.91	7.02	8.10	9.18	10.26	11.34	12.42	13.49	14.57
7.5 to 8.0	.63	1.27	2.33	3.56	4.97	6.55	7.51	8.66	9.81	10.97	12.12	13.27	14.43	15.58
8.0 to 8.5	.70	1.43	2.60	3.93	5.50	6.76	7.99	9.21	10.45	11.67	12.90	14.13	15.36	16.58
8.5 to 9.0	.79	1.58	2.87	4.36	5.86	7.17	8.47	9.78	11.08	12.38	13.68	14.99	16.29	17.59
9.0 to 9.5	.87	1.75	3.17	4.79	6.20	7.58	8.96	10.33	11.71	13.09	14.47	15.84	17.22	18.59
9.5 to 10.0	.96	1.93	3.48	5.09	6.53	7.99	9.44	10.89	12.34	13.80	15.24	16.70	18.15	19.60
10.0 to 10.5	1.06	2.10	3.79	5.35	6.87	8.40	9.92	11.45	12.98	14.50	16.03	17.56	19.08	20.60
10.5 to 11.0	1.16	2.30	4.01	5.61	7.20	8.80	10.41	12.01	13.61	15.21	16.81	18.41	20.01	21.61
11.0 to 11.5	1.26	2.51	4.19	5.86	7.54	9.21	10.89	12.56	14.24	15.91	17.59	19.26	20.94	22.61
11.5 to 12.0	1.37	2.63	4.38	6.12	7.87	9.63	11.38	13.13	14.88	16.62	18.37	20.12	21.87	23.62

Note to TABLE II: The "Price of Gasoline in Cents Per Gallon" to be used in this table shall be the arithmetic average of the prices per gallon of 56° A. P. I. gravity crude oil posted by The Texas Company, Humble Oil and Refining Company and Gulf Oil Corporation for West Texas for the settlement period. In the event one or more of the above purchasers does not post prices for such crude oil during the settlement period then the posted prices of the remaining companies or company shall be used. In the event none of the above purchasers post prices for such crude oil during the settlement period then Buyer shall use the arithmetic average of the posted prices of the purchaser purchasing the largest volume of 56° A.P.I. gravity crude oil for West Texas. The applicable "Rate In Cents Per Thousand Cubic Feet" in the figure horizontally opposite the "Price of Gasoline in Cents Per Gallon", determined as above provided, and vertically below the "Test Gasoline Content in Gallons per 1,000 Cu. Ft. of Gas" (GPM) corresponding to the test gasoline content of the gas delivered hereunder, as determined in accordance with Paragraph 6. Each test gasoline content and sales price division in the above table includes the smaller but excludes the larger figure.

Whenever the "Price of Gasoline in Cents Per Gallon" exceeds 12¢, the applicable "Rate in Cents Per Thousand Cubic Feet" shall be determined by means of the following formula: GPM x "Price of Gasoline in Cents Per Gallon" x .3333. Whenever the GPM exceeds 6.253, the applicable "Rate in Cents Per Thousand Cubic Feet" shall be determined by means of the following formula: GPM x "Price of Gasoline in Cents Per Gallon" x "Factor". The "Factor" to be so employed shall be the applicable one shown in the table below:

Price of Gasoline in Cents Per Gallon	Factor
Less than 2.0¢	.2250
2.0 to 2.5	.2500
2.5 to 3.0	.2625
3.0 to 3.5	.2750
3.5 to 4.0	.2875
4.0 and above	.3333

Each price division in the foregoing table includes the smaller but excludes the larger figure.

[211] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CI75-594

Texaco, Inc.

(FILED MAY 14, 1975)

Petition to Intervene of Northwest Pipeline Corporation

Pursuant to Section 15(a) of the Natural Gas Act, 15 USC Section 717n(a) (1970), and Section 1.8 of the Commission's Rules of Practice and Procedure, Northwest Pipeline Corporation ("Northwest") hereby respectfully petitions the Commission for leave to intervene in the above-captioned proceeding. In support of this petition, Northwest respectfully shows as follows:

1. Northwest Pipeline Corporation is a Delaware Corporation with principal offices in Salt Lake City, Utah. All communications concerning this petition should be addressed as follows, and the following persons should be included in the Commission's official service list:

Edward J. Grenier, Jr., Esquire
Richard P. Noland, Esquire
Sutherland, Asbill & Brennan
1666 K Street, N.W.
Washington, D.C. 20006

William P. Diener, Esquire
Mel S. Martin, Esquire
Northwest Pipeline Corporation
P.O. Box 1526
Salt Lake City, Utah 84110

2. Northwest owns and operates a natural gas pipeline system in the western part of the United States which was previously owned and operated as the northwest division of El Paso Natural Gas Company ("El Paso") through January 31, 1974. On February 7, 1974, this system was transferred to Northwest pursuant to a Federal Court divestiture decree. Northwest delivers gas to customers in Colorado, Idaho, Oregon, Utah, Washington, and Wyoming. In 1973, total sales of the northwest division were about 455 billion cubic feet.

[212] 3. This proceeding involves a Petition for Declaratory Order filed by Texaco, Inc. concerning the lessee's ability to encumber or otherwise restrict the royalty owner's interest in an oil and gas lease. Northwest is a party to several gas purchase contracts which include contractual provisions authorizing a royalty owner to convert his interest to a working interest upon pay out. Northwest, thus, has an interest in the jurisdictional status of such royalty owner and the price at which such working interest can lawfully be sold.

4. In view of the foregoing, Northwest has a substantial and vital interest in the outcome of this proceeding and desires to intervene in order to protect that interest. Northwest is an interested party in this proceeding within the meaning of Section 15(a) of the Natural Gas Act, 15 USC Section 717n(a) (1970), and its intervention and participation in such proceeding will be in the public interest. Northwest is not now, and will not be adequately represented by any other party in this proceeding, and may be bound or adversely affected by the Commission's action herein.

WHEREFORE, for the foregoing reasons, Northwest respectfuliy requests the Commission to issue an order granting it leave to intervene and admitting it as a party to this proceeding with the right to have notice of and to appear at all hearings and prehearing conferences, if such hearings and prehearing conferences are held, to produce evidence and present witnesses, to be heard by counsel and other representatives, to submit briefs, to make oral argument, if oral argument be heard, and to do all other things which any party may properly do.

Respectfully submitted,

/s/ Richard P. Noland
EDWARD J. GRENIER, JR.
RICHARD P. NOLAND
SUTHERLAND, ASBILL & BRENNAN
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(202) 872-7800

Attorneys for
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Salt Lake City, Utah 84110
(801) 328-8252

May 14, 1975

[213] (AFFIDAVIT OMITTED IN PRINTING)

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[214]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CI75-594

TEXACO, INC.

(RECEIVED MAY 27, 1975)

Petition to Intervene and Response of Phillips Petroleum Company

Phillips Petroleum Company (Phillips) hereby petitions the Commission for leave to intervene in the captioned proceeding and as grounds therefor would respectfully show as follows:

I.

The names, titles and mailing addresses of those persons to whom correspondence and communications concerning this matter are to be addressed are as follows:

Sam Jennings, Manager
Laws and Regulations Branch
Gas and Gas Liquids Division
Phillips Petroleum Company
Bartlesville, Oklahoma 74004
Phone: (918) 661-5513

John L. Williford
Senior Counsel
583 Frank Phillips Building
Phillips Petroleum Company
Bartlesville, Oklahoma 74004
Phone: (918) 661-3760

Phillips is a corporation organized under the laws of the State of Delaware, having its principal place

of business in Bartlesville, Oklahoma, and is authorized to conduct business in all fifty (50) states and the District of Columbia.

[215] II.

On January 20, 1975, El Paso Natural Gas Company (El Paso) filed with the Commission a petition for issuance of a declaratory order to resolve certain questions posed by El Paso as a result of the termination of a certain fifty (50) year fixed term lease in the State of Texas, and the consequent reversion of the mineral rights thereunder to certain reversionary interests. Such lease is presently held by Gulf Oil Corporation and the gas from such lease sold to El Paso.

On April 8, 1975, Texaco Inc. filed a petition for a declaratory order to resolve a question as to its rights as the mineral interest reversionary owner. Specifically, Texaco alleged that it is a reversionary mineral interest owner of a fifty (50) year fixed term lease on properties in Ector County, Texas, and that the mineral rights revert to the reversionary interest owners including Texaco on August 7, 1975, which is the date the leasehold estate expires. Texaco's petition further alleges that Gulf is the lessee of said fifty (50) year fixed term lease and that Gulf is currently selling natural gas from properties covered by such lease to Phillips pursuant to a casinghead gas sales contract, which gas is sold by Phillips to El Paso at the tailgate of Phillips' Goldsmith Plant pursuant to Phillips' FPC Gas Rate Schedules No. 7, 32, 33, 497 and 483.

On April 30, 1975, Texaco filed a motion to consolidate for briefing, hearing and decision its petition for issuance of a declaratory order with the proceeding pending at El Paso Natural Gas Company, Docket No. CP75-209, asserting that the legal issue to be decided, as well as the basic factual situation, is the same in both dockets.

On May 6, 1975, El Paso filed its petition for leave to intervene and answer to the motion of Texaco Inc. to consolidate proceedings and answer to the petition of Texaco Inc. for issuance of a declaratory order in the captioned docket. In such answer El Paso asserted that it takes delivery each day at [216] Phillips' Goldsmith Plant of approximately 18 million cubic feet of surplus residue gas attributable to production from acreage covered by the fifty (50) year fixed term lease referred to in Texaco's petition. El Paso asserted that such gas is transported through El Paso's jurisdictional facilities for resale in interstate commerce. By incorporation of a previous pleading filed in Docket CP75-209 on April 25, 1975, El Paso asserts herein that the Commission's order should resolve, *inter alia,* the following question:

> "(iii) Given the facts set forth in (i), without prior Commission authorization, may Phillips reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?"

III.

As the seller of surplus residue gas to El Paso, which gas is in part attributable to the lands covered by the fifty (50) year fixed term lease to Gulf, Phillips is a material party to this proceeding and has a direct interest therein, which interest cannot be adequately represented by any party to this proceeding. Phillips is aware that the time for the filing of petitions to intervene in this proceeding expired on May 14, 1975, under the Commission's notice dated April 22, 1975; however, Phillips submits that its participation will not delay or hinder the proceedings in any manner and that it will accept any dates or scheduling prescribed by the Commission prior to the filing of this petition to intervene.

It is Phillips' position that upon the cessation of deliveries to it by Gulf of gas from the lands covered by the fifty (50) year fixed term lease, Phillips may without prior Commission authorization reduce its sales of residue natural gas to El Paso, by the amount which is attributable to production from the lease in question.

[217] IV.

Wherefore, premises considered Phillips prays that it be allowed to intervene out of time in this proceeding and to participate in all phases thereof, including the presentation of testimony and the cross examination of witnesses in the event of a hearing. In this latter connection Phillips concurs that there are no disputed facts and that the legal questions involved in this proceeding, as well as in Docket No.

CP75-209, can be determined by the Commission on briefs.

Respectfully submitted,

JOHN L. WILLIFORD
LARRY PAIN
Attorneys for
Phillips Petroleum Company

/s/ By John L. Williford
JOHN L. WILLIFORD
583 Frank Phillips Building
Bartlesville, Oklahoma 74004

May 21, 1975

[218] (AFFIDAVIT OMITTED IN PRINTING)

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[219] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[220]

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[221] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman; William L. Springer, and Don S. Smith.

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(Issued June 3, 1975)

Order Consolidating Proceedings, Granting Petitions to Intervene, and Prescribing Schedule for Filing of Briefs

On January 20, 1975, El Paso Natural Gas Company (El Paso) filed in Docket No. CP75-209 a petition for a declaratory order resolving certain questions in connection with the expiration of a 50-year fixed term lease, currently held by Gulf Oil Corporation and others (Gulf, *et al.*), which will expire on July 14, 1975. The facts as presented by El Paso are as follows.

On July 14, 1925, Gulf Production Company, the corporate predecessor of Gulf Oil Corporation (Gulf), as lessee, executed with W. N. Waddell, *et al.*, as lessors, a 50-year fixed term oil and gas lease. By the terms of said lease Gulf obtained the exclusive right to produce and sell oil and gas from 45,771 acres of land in Crane County, Texas. When Gulf, *et al.*'s, leasehold expires on July 14, 1975, the mineral rights, including the rights to natural gas production shall revert to the

reversionary mineral interest owners,[1] (hereinafter referred to as Southland, *et al.*).

[222] Presently, Gulf, *et al.*, make percentage-type sales to Warren Petroleum Company, a Division of Gulf Oil Corporation (Warren), of certain quantities of casinghead gas produced from said Crane County acreage. Pursuant to two gas purchase contracts, dated January 26, 1951, and March 1, 1972, Warren sells to El Paso approximately 60,000 Mcf per day of surplus residue gas at the outlet of the Waddell Gasoline Plant, which gas El Paso transports through its jurisdictional facilities for subsequent resale in interstate commerce. Approximately 25,000 Mcf per day of such residue gas sold to El Paso is attributable to production from wells on land leased by Gulf, *et al.*

El Paso has learned that Southland, *et al.*, is soliciting proposals from intrastate gas transmission companies for the purchase of Southland, *et al.'s* shares of natural gas from the Crane County acreage produced after July 14, 1975. Anticipating an attempt to divert the leasehold gas from interstate to intrastate markets with concomitant reductions in supply to El Paso's system, El Paso is petitioning the Commission for a declaratory order resolving the following questions:

(1) May Southland, *et al.*, divert natural gas from interstate commerce to intrastate commerce

[1] The reversionary mineral interest owners include Exxon Corporation whose interest represents approximately 14% of the term lease gas, and Southland Royalty Company (Southland), soliciting on behalf of itself, the estate of Warren Wright and the Penn interests (collectively Mineral Interest Owners) whose interest represents approximately 81% of the term lease gas. The remaining 5% interest is divided among more than 100 separate interest holders.

without prior permission and approval of the Commission?

(2) Must Gulf, *et al.*, obtain abandonment permission and approval in order to cease sales to Warren and to effectuate a transfer to Southland, *et al.*?

(3) May Warren reduce its sales to El Paso to the extent such sales are attributable to production from the subject leasehold property without prior Commission permission and approval?

Notice of El Paso's petition was published in the Federal Register on February 7, 1975 (40 FR 5818). A notice of intervention was filed by the Public Utilities Commission of California (P.U.C.C.). Petitions for leave to intervene were filed in Docket No. CP75-209 by (1) parties to the transaction in question: Exxon, Mineral Interest Owners, and Gulf; (2) customers of El Paso: Southern California Gas Company and Southwest Gas Corporation; and (3) companies that claim the proceeding in Docket No. CP75-209 may have a collateral effect upon them: Mobil Oil Corporation (reversioner under similar lease), Texaco Inc. (reversioner under a similar lease), and Mitchell Energy Corporation (similar issues in *Mitchell Energy Corporation,* Docket No. CI75-296).

[223] On April 8, 1975, Texaco Inc. (Texaco) filed in Docket No. CI75-594 a petition for a declaratory order to resolve a question similar to a question propounded by El Paso in Docket No. CP75-209 (question 1, *supra*) but stated differently. Texaco asks whether a lessee by making an interstate gas sale can commit

more than its real property interest (*i.e.*, its rights under its lease) thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act.

The facts underlying Texaco's request for declaratory relief are notably similar to the facts alleged in Docket No. CP75-209. On August 7, 1925, Gulf, as lessee, and Goldsmith, *et al.*, as lessors, executed a 50-year fixed term oil and gas lease by the terms of which Gulf obtained exclusive mineral rights to some 19,840 acres of land in Ector County, Texas, until August 7, 1975, whereupon such mineral rights revert to the reversionary mineral interest owners (hereinafter referred to as Texaco, *et al.*).[2] Gulf sells gas from its Ector County leasehold to Phillips Petroleum Company (Phillips) under a percentage-type casinghead gas sales contract. Phillips then sells the residue gas from the tailgate of its Goldsmith Plant to El Paso under Phillip's FPC Gas Rate Schedule Nos. 7, 32, 33, 483, and 497. Approximately 18,000 Mcf per day of the residue gas sold to El Paso by Phillips is attributable to production from the Ector County lease.

Notice of Texaco's petition was published in the Federal Register on April 29, 1975 (40 FR 18598). El Paso Gulf, Phillips,[3] and Mineral Interest Owners filed petitions to intervene in Docket No. CI75-594, as did

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[2] By deed executed May 4, 1929, Texaco acquired a ¼ interest in the reversionary mineral rights to the Ector County property from Leon Goodman, *et al.* Presumably, Leon Goodman, *et al.*, retain the remaining ¾ reversionary interest.

[3] Phillips petition to intervene was filed out of time.

Northwest Pipeline Corporation which claims that the proceeding may have a collateral effect upon it. A notice of intervention in Docket No. CI75-594 was filed out of time by P.U.C.C.

Based upon the similarity of the facts and legal questions presented in Docket No. CI75-594 with those in Docket No. CP75-209, Texaco filed a motion to consolidate the two proceedings, which motion El Paso supports. [224] the Commission agrees that the proceedings should be consolidated.

As the petitions for declaratory order present strictly questions of law and there has been presented neither factual dispute nor a request for formal hearing, the Commission sees no need to hold an evidentiary hearing prior to its decision. So that each of the aforementioned parties may fully develop the law from which the nature of its alleged rights and interests may by determined the Commission will allow those parties and the Commission staff to file briefs with the Commission on the issues set forth in the petitions in Docket Nos. CP75-209 and CI75-594. In order that the Commission's decision may be reached prior to the expiration of the lease in Docket No. CP75-209 (July 14, 1975), the Commission is providing a briefing schedule as set forth below.

The Commission finds:

(1) The proceeding in Docket No. CP75-209 shares similar facts and common questions of law with the proceeding in Docket No. CI75-594.

(2) Participation by P.U.C.C. and Phillips in Docket No. CI75-594 will not delay the instant pro-

ceedings and therefore good cause exists for accepting their late notice of intervention/petition to intervene.

(3) Participation by the petitioners to intervene in Docket Nos. CP75-209 and CI75-594 may be in the public interest.

(4) It is necessary and proper in the public interest that these proceedings be expedited in accordance with the procedure set forth below.

The Commission orders:

(A) The proceeding in Docket No. CI75-594 is hereby consolidated with the proceeding in Docket No. CP75-209 for purposes of briefing and decision.

(B) The petitioners to intervene are hereby permitted to intervene in this consolidated proceedings subject to the rules and regulations of the Commission; *Provided, however,* that participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; [225] and *Provide, further,* that the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

(C) Initial briefs on the questions presented in Docket Nos. CP75-209 and CI75-594 may be filed by any party to this consolidated proceeding and the Commission staff on or before June 11, 1975.

(D) Reply briefs shall be filed on or before June 18, 1975.

By the Commission.

(SEAL)

MARY B. KIDD,
Acting Secretary.

[226-237] (NOT USED)

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Supreme Court, U. S.
FILED
AUG 31 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1114

CALIFORNIA, *et al.*, *Petitioners*

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

No. 76-1133

EL PASO NATURAL GAS COMPANY, *Petitioner*

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

No. 76-1587

FEDERAL POWER COMMISSION, *Petitioner*

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITIONS FOR WRITS OF CERTIORARI FILED
February 12 and 16 and May 12, 1977
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VOLUME II
Pages 365-746

Supreme Court of the United States

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[238] BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Brief of Commission Staff

EDWARD ROSS MARK
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Commission Staff Counsel

Washington, D. C.
June 20, 1975

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[240] BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Brief of Commission Staff

I. INTRODUCTION

This case involves a legal question of first impression before the Commission. Upon expiration of a fixed-term gas lease are the reversionary interest holders under the lease subject to the constraints of Section 7(b) of the National Gas Act? Seeking resolution of this and related questions two separate petitions for declaratory order have been filed with the Commission.

II. STATEMENT OF THE CASE

A. *Factual Context*

On January 20, 1975, El Paso Natural Gas Company (El Paso) filed in Docket No. CP75-209 a petition for a declaratory order resolving certain questions in connection with the imminent expiration of a 50-year fixed term lease currently held by Gulf Oil

Corporation and others (Gulf, *et al.*).[1] Basically, the facts as presented by El Paso are as follows.

On July 14, 1925, Gulf Production Company, the corporate predecessor of Gulf Oil Corporation (Gulf), as lessee, executed with W.N. Waddell, *et al.*, as lessors, a 50-year [241] fixed term oil and gas lease. By the terms of said lease Gulf obtained the exclusive right to produce and sell oil and gas from 45,771 acres of land in Crane County, Texas. When Gulf, *et al.*'s, leasehold expires on July 14, 1975, the mineral rights, including the rights to natural gas production shall revert to the reversionary mineral interest owners,[2] (hereinafter referred to as Southland, *et al.*).

Presently, Gulf, *et al.*, make percentage-type sale to Warren Petroleum Company, a Division of Gulf Oil Corporation (Warren), of certain quantities of casinghead gas produced from said Crane County acreage. Pursuant to two gas purchase contracts, dated January 26, 1951, and March 1, 1972, Warren sells to El Paso approximately 60,000 Mcf per day of surplus residue gas at the outlet of the Waddell Gasoline Plant, which gas El Paso transports through its jurisdictional facilties for subsequent resale in interstate

[1] Besides Gulf Oil Corporation (Gulf) lessees include B.W.P., Inc.; Highland Production Company, Inc.; W. Nelson Rees; G. Dillard Anderson, Jr.; V. L. DeBolt and John L. Harlan.

[2] The reversionary mineral interest owners include Exxon Corporation, whose interest represents approximately 14% of the term lease gas, and Southland Royalty Company (Southland), whose own interests and those of the estate of Warren Wright and the Penn interests (collectively Mineral Interest Owners) represent approximately 81% of the term lease gas. The remaining 5% interest is divided among more than 100 separate interest holders.

commerce. Approximately 25,000 Mcf per day of such residue gas sold to El Paso is attributable to production from wells on land leased by Gulf, *et al.*

El Paso has learned that Southland, *et al*, are soliciting proposals from intrastate gas transmission companies for the purchase of Southland, *et al.*'s, shares of natural gas from the Crane County acreage produced after July 14, 1975.[3] [242] Anticipating an attempt to divert the leasehold gas from interstate to intrastate markets with concomitant reductions in supply to El Paso's system, El Paso is petitioning the Commission for a declaratory order resolving the following questions:

> (1) May Southland, *et al.*, divert natural gas from interstate commerce to intrastate commerce without prior permission and approval of the Commission?
>
> (2) Must Gulf, *et al.*, obtain abandonment permission and approval in order to cease sales to Warren and to effectuate a transfer to Southland, *et al.*?
>
> (3) May Warren reduce its sales to El Paso to the extent such sales are attributable to production from the subject leasehold property without prior Commission permission and approval?

[3] Southland has contracted to sell its share, approximately 47%, of the gas in question to Intratex Gas Corporation, a subsidiary of Houston Natural Gas Corporation. The contract, extending for a period of 20 years after July 14, 1975, calls for a base price of $1.90 per million Btu plus fixed increases of 2.5 cents per million Btu on January 1, 1976, and each 6 months thereafter.

On April 8, 1975, Texaco Inc. (Texaco) filed in Docket No. CI75-594 a petition for a declaratory order to resolve a question similar to a question propounded by El Paso in Docket No. CP75-209 (question 1, *supra*) but stated differently. Texaco asks whether a lessee by making an interstate gas sale can commit more than its real property interest (*i.e.*, its rights under its lease) thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act.

The facts underlying Texaco's request for declaratory relief are notably similar to the facts alleged in Docket No. CP75-209. On August 7, 1925, Gulf, as lessee, and Goldsmith, *et al.*, as lessors, executed a 50-year fixed term oil and gas lease by the terms of which Gulf obtained exclusive mineral rights to some 19,840 acres of land in Ector County, Texas, until August 7, 1975, whereupon such mineral rights revert to the reversionary mineral interest owners [243] (hereinafter referred to as Texaco, *et al.*).[4] Gulf sells gas from its Ector County leasehold to Phillips Petroleum Company under a percentage-type casinghead gas sales contract. Phillips then sells the residue gas from the tailgate of its Goldsmith Plan to El Paso under Phillips FPC Gas Rate Schedule Nos. 7, 32, 33, 483, and 497. Approximately 18,000 Mcf per day of the residue gas sold to El Paso by Phillips is attributable to production from the Ector County lease.

[4] By deed executed May 4, 1929, Texaco acquired a ¼ interest in the reversionary mineral rights to the Ector County property from Leon Goodman, *et al.* Presumably, Leon Goodman, *et al.*, retain the remaining ¾ reversionary interest.

B. *Procedure*

By order issued June 3, 1975, the Commission consolidated the two proceedings and invited the parties to submit briefs on the legal issues presented. Noting that the facts in the two proceedings were clear and uncontested, the Commission determined that the legal questions presented would be resolved without evidentiary hearings on the basis of the filings and briefs submitted in this consolidated proceeding.

III. Staff Position

In both proceedings El Paso's interest is in maintaining its present supply of gas. At stake for El Paso are approximately 15.7 million Mcf of gas annually or over 1 percent of its total annual firm requirements. On the other side, Reversioners (Southland, *et al.*, and Texaco, *et al.*) collectively stand to realize up to $21 million more annually by selling gas from the subject leaseholds to the intrastate market.[5] Thus the sides are clearly drawn; and to both [244] sides the issue of overriding concern, no matter how it is phrased, is whether Reversioners, who according to Texas law will control the gas after the expiration of the subject leases,[6] must seek Commission permission and approval under Section 7(b) of the Natural Gas Act before diverting the gas. This is the nature of the

[5] This calculation assumes that all Reversioners execute contracts upon terms like those in the Southland-Intratex contract (see note 3, *supra*) and is based upon the approximate current national rate for interstate sales of 51 cents per Mcf of gas.

[6] *Gulf Oil Corporation* v. *Southland Royalty Company*, 496 S.W. 2d 547 (1973).

single question presented in Docket No. CI75-594 and of question no. 1 presented in Docket No. CP75-209.

It is the position of the Commission staff that the gas from the subject acreage, whether produced before or after expiration of the leases, is dedicated to the interstate market and that by virtue of their control over that gas Reversioners are subject to the constraints of Section 7(b). As will be shown, only this position is faithful to both prior precedent and the public interest.

IV. Argument

A. *Upon expiration of the fixed-term gas leases Reversioners are subject to the constraints of Section 7(b)*

Not surprisingly, the various pleadings submitted by those representing Reversioners' interests contend that Reversioners need not obtain prior Commission abandonment authorization in order to sell the gas to the intrastate market. Their contention is based upon the fiction that there is a distinction for purposes of dedication between gas from the same reserve produced before and after the expiration of a lease. Th claim is that only the gas produced during the term of the 50-year lease is within the authority of Lessees to sell and is relied upon by El Paso; therefore, only the gas produced prior to the expiration of the leases is dedicated to interstate commerce. Gas produced after expiration of the leases is, in Reversioners' view, undedicated, and so they argue that the Commission has no jurisdiction to dictate to whom the gas must be sold.

[245] To the contrary, the gas which will revert to the control of Reversioners after the leases expire is

dedicated to the interstate market. By virtue of their succession to control over that gas Reversioners, as natural gas companies, become subject to the requirements of Section 7(b).

1. *The gas produced from the subject acreage after lease expiration is dedicated to interstate commerce.*

It is well established that there can be no withdrawal of gas once dedicated to the interstate market from continued interstate movement without permission and approval of the Commission under Section 7(b).[7] Since the gas produced by Lessees is sold for resale to El Paso which transports the gas in interstate commerce, clearly such gas is dedicated to interstate commerce. Gas from the entire acreage of both leaseholds is dedicated since Lessees are restricted neither as to the amount of gas which may be sold from the subject acreage nor as to the area from which gas may be produced on the subject acreage. Reversioners would, of course, have the Commission believe that Lessees cannot dedicate to the interstate market volumes attributable to the mineral estate of Reversioners. There is no question that Lessees had authority to sell all the gas from the reserves within the fixed term of the lease.[8] The mere fact that they have not yet done so does not prevent the gas in the reserve from being dedicated to interstate commerce.

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[7] *Atlantic Refining Co.* v. *P.S.C.N.Y.*, 360 U.S. 378, 389 (1959); *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 156 (1960).

[8] Reversioners have a fixed royalty interest of ⅛ part of the value of the casinghead gas (calculated at the rate of 4 cents per Mcf) with no right to take gas in kind.

An artificial cut-off in time in the dedication of gas reserves to the interstate market in deference to the terms of a lease is without foundation. The mere expiration of a lease does not somehow interrupt the dedication of gas. Case law consistently refers to dedication of reserves as [246] uninterruptible. It has previously been held that neither expiration of contracts[9] nor producer successions[10] can impede the continued interstate flow of gas once dedicated. Referring to an assignment of interest under a lease, the court in *Hunt* v. *FPC*[11] said,

> Like the ancient covenant running with the land the duty to continue to deliver and sell flows with the gas from the moment of the first delivery down to the exhaustion of the reserve, or until the Commission on appropriate terms, permits cessation of service under Section 7(b). [p. 342]

For the same reason that contract terms and assignments do not affect dedication of gas reserves, neither should expiration of a lease. Once reserves are dedicated to the interstate market they become a part of the Commission's regulatory scheme, safeguarded by Section 7(b), to ensure continuity and stability of service. To allow contract terms,[12] assign-

[9] *Amoco Production Company, et al.*, 46 FPC 1390 (1971).

[10] Opinion No. 467, *Cumberland Natural Gas Company*, 34 FPC 132 (1965).

[11] 306 F. 2d 334, (1962), reversed on other matters 376 U.S. 515 (1965).

[12] *California* v. *Lo-Vaca Gathering Company*, 379 U.S. 366, 369-370 (1965).

ments[13] or the instant fixed-term leases to control the flow of gas reserves would undermine that regulatory scheme. Limiting reserve dedication to the term of a lease would allow lessors to usurp the function of the Commission and frustrate the purposes of Section 7(b) by entering into short-term leases, leases terminable at will, and bilateral agreements with lessee-producers to agree to [247] minimize production dedicated to the interstate market until the lease expires at which time they may avail themselves of higher intrastate prices.[14]

It hardly needs to be said that allowing producers to flaunt Commission regulation through the calculated use of leasing arrangements would disserve the public interest. As long as the present dichotomy between interstate and intrastate gas prices continues "limited-term" leasing arrangements would flourish with the necessary concomitant that the supply of gas to the interstate market would suffer. In the instant circumstances there is a potential diversion from the interstate market (and from El Paso which from Sepember 1974 to August 1975 curtailed approximately 12 percent of its firm requirements[15])

[13] Opinion No. 724, *Blair-Vreeland*, issued March 18, 1975 (53 FPC ——), in Docket No. CI74-331, mimeo p. 12. Opinion and Order Denying Rehearing and Motion to Stay issued May 14, 1975.

[14] In a different context, attempts such as this to pit the intrastate market against the interstate market in an effort to maximize gas prices have been rejected by the Commission. See, *e.g.*, order issued December 20, 1974, *Wayne J. Spears*, in Docket No. CI75-218; and order issued February 27, 1975, *James M. Forgotson, Sr.*, in Docket No. CI75-392.

[15] El Paso's Report of Gas Supply and Requirements, 1974-75 (FPC Form 16).

of 15.7 million Mcf of gas annually. On the other hand, a Commission determination that reversioners under expired gas leases are subject to Section 7(b) would impose a minimal burden. Few would be adversely affected by such a determination because, as Reversioners have pointed out, gas leases that are limited in duration are now extremely rare.[16] Furthrmore, Reversioners must have understood that their interest under the leases (other than royalties) was contingent upon the extent of reserve depletion during the 50-year term and that there may be no gas remaining at term's end (an event probably considered likley in the minds of the original parties to the lease).

[248] In support of the contention that the gas produced after the expiration of the subject leases will be undedicated, it is stressed that because El Paso was on notice of the limited term of the leases there was no reliance upon the receipt of gas after the expiration of said leases. The lack of reliance by El Paso upon gas produced after the expiration of the leases cannot be said to compel abrogation of Section 7(b) control over the gas. As shown in Opinion 467 (*Cumberland*), which was reaffirmed recently in Opinion No. 724 (*Blair-Vreeland*), a producer's interest in acreage can be "effectively dedicated irrespective of the fact that at its time of dedication the gas reserves in such acreage may have been unproven. . . ." (at p. 137). Although the interstate buyers in *Blair-Vreeland* and *Cumberland* did not

[16] See Petition to Intervene and Answer of Mineral Interest Owners to Petition for Declaratory Order in Docket No. CP75-209 at page 5, footnote 12 and accompanying text.

contract for gas in reliance upon undiscovered reserves, the Commission nevertheless held that the undiscovered reserves were dedicated to the interstate buyers.

It has further been argued that the decision in *El Paso* v. *Bass,* 48 FPC 1269 (1972), supports the conclusion that Reversioners will be free to sell the subject gas to whomever they choose without abandonment authorization from the Commission. Perry Bass leased gas interests to Shell Oil Company (Shell) but retained an option to convert his royalty interest to a working interest upon "payout of the well." Upon electing to convert his royalty interest to a working interest, Bass sought to sell his gas to Natural Gas Pipeline Company of America (Natural) rather than El Paso, to whom Shell had been selling the leasehold gas. The Commission decided that Bass' prior royalty did not make him a seller in interstate commerce nor did his conversion from a royalty to a working interest; therefore, Bass was free to sell his share of the gas to Natural without prior abandonment authority.

Bass never reached the question of dedication of reserves to the interstate market because there was no attempt to divert the gas to the intrastate market. Because in *Bass* the Commission was not dealing with the public interest in maintaining the flow of interstate gas, about which the Commission is paramountly concerned, *Bass* can hardly be said to [249] be controlling over the instant questions. Furthermore, the decision in *Bass* was influenced in large measure by the Commission's reluctance to discourage farmout arrangements because such arrangements tend to pro-

mote interstate market gas dedication. The instant case, of course, does not deal with farmouts and to that extent *Bass* is further distinguishable.

Bass' distinguishability notwithstanding, the holding of *Bass* is readily reconciled with the decision staff urges herein. From the outset of Shell's sales of gas to El Paso Shell lacked the authority to sell the proportionate share of the reserves attributable to Bass' potential working interest, and, therefore, Bass' working interest gas was never dedicated to El Paso. Since well payout is not an uncommon occurrence, it was likely not within the contemplation of Bass and Shell that Bass' proportionate working interest share of gas would be dedicated by Shell. In the instant circumstances, however, Lessees had the authority from the outset to sell all the gas from the subject reserves, and, therefore, all the gas was dedicated to El Paso. When the 50-year fixed-term leases in question were executed it was likely not within the contemplation of the parties to the leases that any commercial amounts of gas would remain after lease expiration; hence, there was no restriction upon dedication by Lessees.

No distinction can properly be made for purposes of dedication of reserves to the interstate market, between gas from the same reserves produced before and after the expiration of a lease. The gas once dedicated to the interstate market by Lessees remains dedicated subject to the Commission's control and the provisions of Section 7(b).

2. *By virtue of their succession to control over gas dedicated to the interstate market Reversioners, as natural gas companies, become subject to the requirements of Section 7(b).*

[250] Commission permission and approval prior to an abandonment is required under Section 7(b) of the Natural Gas Act only of natural gas companies. Are Reversioners natural gas companies subject to the requirements of Section 7(b)?

Following *Mobil Oil Corporation* v. *FPC*, 463 F.2d 256 (1971), *Bass* held that a royalty interest does not necessarily subject the interest holder to Commission jurisdiction because royalty provisions are not sales. Furthermore, the Commission ruled that Bass did not become jurisdictional when he converted his royalty interest to a working interest because he was not thereby automatically bound by the Commission's certification of the Shell-El Paso sale. By similar reasoning, since a reversionary interest is not a sale the interest holders are not by virtue of that interest alone subject to the jurisdiction of the Commission.

However, when Reversioners take over the interest in the subject reserves on July 15, 1975, and August 8, 1975, they become bound by prior Commission certification and therefore step into the shoes of their predecessors as natural gas companies. Bass was not bound by prior certification because the gas he sought to sell was never dedicated. On the other hand, because the reserves that Revisioners control have been dedicated to interstate commerce Reversioners must

step into the shoes of Lessees in order that there might be consistency of treatment of such reserves."

A different conclusion would yield the anomalous result that there is gas dedicated to the interstate market, but the party controlling the gas is not a natural gas company subject to the proscriptions of Section 7(b) of the Natural Gas Act. Therefore, on July 15, 1975, and August 8, 1975, Reversioners will assume control over reserves dedicated to the interstate market thereby assuming the status of a natural gas company subject to the requirements of Section 7(b) with respect to the gas reserves.

[251] B. *Lessees Need Not Obtain Commission Permission And Approval In Order To Cease Sales After Expiration Of The Leases.*

Assuming Reversioners are required to file an application pursuant to Section 7(b) a like filing by Lessees is not required, although a technical construction of the applicable Regulations might dictate otherwise. Section 2.64 of the General Policy and Interpretations (18 CFR 2.64) allows that a producer (Lessees) need not file for abandonment permission and approval if a certificate is required of its successor (Reversioners). But if Reversioners continue the percentage-type sales to Warren/Phillips (Plant Operators), Section 2.64 would appear to be inoperative because under the provisions of Section 154.91(e) of the Regulations (18 CFR 154.91(e)) no certificate would be issued to Reversioners as producers selling gas under a percentage-type contract. If Section 2.64 is deemed

[17] See Opinion No. 408, *Graridge Corporation (Operator), et al.*, 30 FPC 1165, 1162 (1963).

inoperative then an application pursuant to Section 7(b) would be required of Lessees. Notwithstanding this technical construction, an abondonment application by Lessees would be both superfluous and inconsistent with the purpose of Section 2.64 to avoid unnecessary filings. Accordingly, Lessees should not be required to obtain permission and approval in order to cease sales upon the expiration of the leases since the sales may not be discontinued solely as a result of the expiration of the leases.

C. *Plant Operators Are Not Required To Obtain Commission Permission And Approval In Order To Reduce Sales To El Paso*

Staff notes the contention in some of the pleadings that, no matter the disposition of other questions in this proceeding, Plant Operators are not required to have Section 7(b) permission and approval prior to curtailing deliveries to El Paso. Plant Operators are obligated to El Paso, pursuant to their contracts, to deliver the full volume of surplus residue gas available. The claim is that under such a contract Plant Operators are obligated only to their best effort and that no abandonment authorization is required if [252] deliveries need be curtailed due to no fault of their own. Whether or not that contention is correct, Plant Operators need not file an application pursuant to Section 7(b). Under Section 154.91(e) Plant Operators need only file an annual report listing the producer (Lessees) as no longer supplying their plant.

V. Conclusion

Applicable law and the public interest in future dedication of gas to the interstate market compel the con-

clusion that Reversioners must obtain Commission permission and approval pursuant to Section 7(b) prior to diverting their interests in the subject gas from its interstate commitment. This conclusion and the applicable Commission Regulations lead to the further results that Lessees and Plant Operators are not subject to Section 7(b) upon expiration of the leases on July 14, and August 7, 1975. The Commission should issue a declaratory order in this proceeding consistent with these conclusions.

Respectfully submitted,

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Washington, D. C.

June 20, 1975

[253] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

. . . . . .

[254] UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(RECEIVED JUNE 23, 1975)

Brief of the People of the State of California and the Public Utilities Commission of the State of California

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June 19, 1975

[255] UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Brief of the People of the State of California and the Public Utilities Commission of the State of California

Pursuant to the Federal Power Commission (Commission) Order Consolidating Proceedings, Granting Petitions to Intervene, and Prescribing Schedule for Filing of Briefs, issued on June 3, 1975 in the above entitled proceeding, the People of the State of California and the Public Utilities Commission of the State of California (California), intervenors, respectfully submit their brief in this proceeding.

CALIFORNIA'S INTEREST IN THIS PROCEEDING

California has intervened in this proceeding before the Commission in order to represent the interest of its more than 20 million residents who directly and indirectly consume natural gas. The California Public Utilities Commission is the regulatory agency charged by Article XII of the Constitution of the State of California with the responsibility *inter alia*, of regulating natural gas sold by distributors within California. The state depends on natural gas as the basic

source of residential energy and, to a lesser degree, of industrial energy. Approximately 80 percent of the supply of natural gas required to meet the needs of the California market must be imported from sources outside the state. El Paso Natural Gas Company (El Paso) is a major supplier of natural gas for use within California. During the last several years, California distributors have been faced with declining deliveries from El Paso. If El Paso loses the sources of supply at issue in the subject proceeding, there will be a direct effect on the volume of gas available to California distributors.

[256] STATEMENT OF FACTS

This proceeding was instituted on January 20, 1975, when El Paso filed in Docket No. CP75-209 a petition for a declaratory order resolving questions in connection with the expiration of a 50-year fixed term lease currently held by Gulf Oil Corporation (Gulf) which will expire on July 14, 1975. On July 14, 1925, Gulf Production Company, predecessor of Gulf, obtained a 50-year fixed term oil and gas lease from one W. N. Waddell. When Gulf's leasehold expires on July 14, 1975, the mineral rights, including the rights to natural gas production shall revert to the reversionary mineral interest owners. The reversionary mineral interest owners plan to sell the natural gas produced under the lease to intrastate pipeline companies. Currently, Gulf sells the natural gas produced under the lease through is subsidiary, Warren Petroleum Company, to El Paso for interstate use.

Based on the above facts, El Paso posed three questions to the Commission:

1. May Southland, *et al.* (the reversionary interest holders) divert natural gas from interstate commerce to intrastate commerce without prior permission and approval of the Commission?

2. Must Gulf, *et al.* obtain abandonment permission and approval in order to cease sales to Warren Petroleum Company and to effectuate a transfer to Southland, *et al.*?

3. May Warren Petroleum Company reduce its sales to El Paso to the extent such sales are attributable to production from the subject leasehold property without prior Commission permission?

Subsequent to the submission of these questions to the Commission, Gulf advised the Commission that Warren Petroleum Company is owned by Gulf so that questions 2 and 3 are synonymous.

On April 8, 1975, Texaco Inc. (Texaco) filed in Docket No. CI75-594 a petition for a declaratory order to resolve issues similar to those raised by El Paso in Docket No. 75-209. Texaco alleged that it is the reversionary mineral interest owner of a 50-year lease also held by Gulf. Texaco stated that the proper question is whether a lessee, by making an interstate gas sale, can commit more than its real property interest thereby encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act. The Commission consolidated the two proceedings in its order of June 3, 1975.

[257] CALIFORNIA'S POSITION

California takes the position that the volume of gas currently flowing in interstate commerce that is attributable to wellhead gas produced under both 50-year leases with El Paso cannot be diverted from interstate commerce without Commission approval. There are basically two issues to be resolved. May the lessor reversionary mineral interest owner divert natural gas from interstate commerce to intrastate commerce without Commission approval and may the lessee seller of natural gas in interstate commerce to El Paso reduce the amount of natural gas it supplies to El Paso without Commission approval? California believes that these questions must be answered in the negative. It is well established that once natural gas is dedicated to interstate commerce it cannot be removed therefrom without abandonment authorization pursuant to Section 7(b) of the Natural Gas Act. The contractual arrangements involved in the sale of gas cannot override the provisions of the Natural Gas Act. In both factual situations being considered in this proceeding, the gas involved is, at present, physically moving in interstate commerce directly from the wellhead. Therefore, under the Natural Gas Act, Commission approval must be obtained before gas may be diverted from interstate use. Additionally, it is California's position that even if certain contractual relationships constitute exceptions to the authority of the Natural Gas Act, the parties to this proceeding do no come within those exceptions.

Argument

I

The Reversionary Mineral Interest Owners Cannot Divert Natural Gas From Interstate Commerce to Intrastate Commerce Without Prior Permission of the Commission.

Exxon Corporation (Exxon) has argued that this issue was resolved by the Commission in *El Paso Natural Gas Company* v. *Perry R. Bass,* 48 F.P.C. 1269 (1972). In that case, the Commission ruled that the owner of a royalty interest in a gas well who elected to take a one-half working interest in the well and sell the gas to another pipeline company need not obtain abandonment authority from the Commission. Bass was the royalty interest holder who chose to convert his royalty interest into a one-half share working interest. At the time Bass made the conversion, gas was being produced from the well by Shell Oil Company and Shell was selling the gas to El Paso. California asserts that there are critical factual differences that distinguish the *Bass* case from the instant case. The agreement under which Bass owned a royalty interest contained provisions which expressly prohibited Shell from disposing of Bass' share of the gas [258] production. Further, the Commission found that as a matter of public policy the type of agreement involved in the *Bass* case, called a "farm-out" agreement, should be exempt from the requirements of abandonment authorization because such agreements encouraged oil and gas exploration.

In the instant case, the agreements between the parties do not specifically prohibit the gas producer

from encumbering a percentage of gas belonging to the reversionary interest owner. In this case, the entire gas production is currently in interstate commerce and it is this total amount that the reversionary interest holders propose to remove from interstate commerce.

The public policy in the *Bass* case is not applicable in the present situation of gas shortages in the United States today. There is sufficient incentive to produce new gas wells without providing special exemptions for particular contractual agreements. Rather, public policy today dictates that the Commission strictly limit contractual exemptions from the Natural Gas Act.

The emphasis in the instant proceeding should not, however, be placed on the contractual arrangements as Exxon has argued. Rather, the Commission should rely on the fact that the gas in issue is currently dedicated to interstate commerce by its physical movement in El Paso's pipeline. The United States Supreme Court in the cases of *Sunray Mid-Continent Oil Company* v. *Federal Power Commission,* 364 U.S. 137, 4 L.Ed. 2d 1623; and *California* v. *Lo Vaca Gathering Co.,* 379 U.S. 366, 13 L.Ed. 357, held that the movement of natural gas in interstate commerce, not the contractual arrangements between the parties, dictated the application of the Natural Gas Act.

In the *Sunray Mid-Continent Oil Company* case, the Court addressing the status of the contract in dispute stated:

> "It is apparent that the Commission's order in no way violates the integrity of petitioner's contract with United. During its term, both parties

are bound by it to the same extent as any member of this regulated industry. When it expires, petitioner, to be sure, will be under an obligation to continue to deliver gas to United on the latter's request unless it can justify an abandonment before the Commission."[1]

[259] The Court went on to state:

"An initial application of an independent producer, to make movements of natural gas in interstate commerce, leads to a certificate of public convenience and necessity under which the Commission controls the basis on which gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval."[2]

The *Sunray Mid-Continent Oil Company* case clearly asserts the authority of the Natural Gas Act over gas flowing in interstate commerce regardless of the contents of the contractual agreements between the parties.

While the facts in the *Lo Vaca Gathering Company* case are somewhat different from those in the instant proceeding, the case is relevant in that it reiterated the rule that it is the movement of gas in interstate commerce that dictates the coverage of the Natural Gas Act and the authority of the Federal Power Com-

[1] *Sunray Mid-Continent Oil Company* v. *Federal Power Commission* 4 L.Ed. 2d 1623 at 1637

[2] *Sunray Mid-Continent Oil Company, supra* at 1637.

mission, not the contractual arrangements between the parties.

II

The Seller of Natural Gas in Interstate Commercerce to El Paso May Not Reduce the Amount of Natural Gas It Supplies to El Paso Without Commission Approval

California argues that the reasoning stated in Section I above also applies to this issue. Gulf cannot reduce its sales of gas in interstate commerce without abandonment authority from the Commission. Mere reliance on the reversionary mineral interest owners' legal arguments is not acceptable to justify a reduction in gas supply to El Paso. If Gulf cannot obtain abandonment authority from the Commission, it cannot reduce the volume of gas it is currently supplying to El Paso. Gulf has a duty to protect the interstate flow of the natural gas in question. In addition to the reasoning in Section I, California asserts that Gulf as a gas producer clearly comes within the doctrine of *Phillips Petroleum Co.* v. *Wisconsin* 347 U.S. 672, 98 L.Ed. 1035. In the *Phillips* case the Court held that the Commission has jurisdiction over "well-head" sales of natural gas by the producer.

Gulf as well as the reversionary mineral interest owners cite the case of *Mobil Oil Corporation* v. *Federal Power Commission*, 463 F 2d 256 (1972) to establish that neither Gulf nor the reversionary interest owners come under the [260] Commission's jurisdiction when their contract expires. In the *Mobil* case, the lessor was a mere royalty owner under a

land lease agreement. The lessor permitted oil and gas exploration on its land not knowing whether there would be actual production. The Court in the *Mobil* case held that under that fact situation the Commission had no jurisdiction over the royalty interest.

California submits that in view of the two United States Supreme Court cases cited above and the current natural gas situation in the United States today, both law and public policy dictate that the *Mobil* case should not be applied. However, if the Commission finds that the *Mobil* case is applicable, California questions whether the reversionary mineral interest owners in the instant proceeding can be categorized as mere lessors that had no knowledge of whether oil and gas would be produced on their lands. Exxon and Texaco as well as other reversionary mineral interest owners in this proceeding are oil and gas corporations that purchased a share of the reversionary mineral interest in the subject property knowing that the gas reserves were proven and that the field was substantially developed. As in case of *U.G.I.* v. *Continental Oil Co.*, 381 U.S. 392, 14 L.Ed. 2466, the agreements involved in the instant proceeding are such that they are very close in economic effect to conventional sales of natural gas. Therefore, the reversionary mineral interest owners in the instant proceeding are better categorized as royalty owners engaged in the sale of natural gas in interstate commerce for resale and therefore come within the purview Section 1(b) of the Natural Gas Act.

CONCLUSION

For the above stated reasons, California respectfully requests that the Commission find that the natural gas in question comes within its jurisdiction and that abandonment authority must be sought before the natural gas can be diverted to intrastate use. In this time of natural gas shortage in interstate commerce, the Commission must strictly [261] limit those instances where agreements between private parties can avoid the authority of the Natural Gas Act and the Commission.

Respectfully submitted,

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Dated: June 19, 1975

[262]

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[264]

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209
EL PASO NATURAL GAS COMPANY

Docket No. CI75-594
TEXACO, INC.

(RECEIVED JUNE 23, 1975)

Initial Brief of El Paso Natural Gas Company

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June 20, 1975

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UNTED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209
EL PASO NATURAL GAS COMPANY

Docket No. CI75-594
TEXACO, INC.

Initial Brief of El Paso Natural Gas Company

EL PASO NATURAL GAS COMPANY ("El Paso"), pursuant to Section 1.29 of the Commission's Rules of Practice and Procedure[1] and in accordance with the briefing schedule established herein, respectfully submits this initial brief in the above-styled and docketed proceeding.

I.

STATEMENT OF THE CASE

This proceeding is a consolidation of two proceedings involving the issue of the necessity for abandonment authorizations pursuant to Section 7(b) of the Natural Gas Act as a result of the forthcoming expiration of two 50-year fixed term oil and gas leases.

The first lease was executed on July 14, 1925, between Gulf Production Company, the corporate predecessor of Gulf Oil Corporation ("Gulf"), as lessee, and W. N. Waddell, *et al.*, as lessors (hereinafter re-

[1] 18 C.F.R. Section 1.29 (1974).

ferred to as the "Waddell lease").[2] According to El Paso's information and belief there are currently six other individual and corporate [270] lessees besides Gulf subject to the Waddell lease.[3] All lessees including Gulf are hereinafter referred to as "Gulf, *et al.*"

By the terms of the Waddell lease, Gulf obtained the exclusive right of exploiting 45,771 acres of land in Crane County, Texas, and producing oil and gas therefrom. Upon execution of the lease, Gulf commenced drilling operations on the land and has continuously conducted operations thereupon to the present date. At the present time, Gulf is operating approximately 925 producing oil and gas wells on the land.

On January 26, 1951, El Paso, as buyer, and Gulf, as seller, executed a residue gas purchase agreement

[2] A true conformed copy of this oil and gas lease, recorded in Volume 10, pp. 397-400 of the Deeds Records of Crane County, Texas, is attached to El Paso's Petition for Issuance of a Declaratory Order as Exhibit "A" and made a part thereof. An amendment to this oil and gas lease dated March 16, 1926, recorded in Volume 12, pp. 205-206, of the Deeds Records of Crane County, Texas, was executed by the same parties, covering certain lands in Crane County, Texas, as described therein. A true copy of this amendment is attached to El Paso's original petition as Exhibit "B" and made a part thereof.

[3] According to El Paso's information and belief these lessees are: (1) B.W.P., Inc., a corporation duly incorporated under the laws of the State of Texas, (2) Highland Production Company, Inc., a corporation duly incorporated under the laws of the State of Texas, (3) W. Nelson Rees, an individual who resides in Odessa, Ector County, Texas, (4) G. Dillard Anderson, Jr. an individual who resides in Midland, Midland County, Texas, (5) V. L. De Bolt, an individual who resides in Odessa, Ector County, Texas, and (6) John L. Harlan, Trustee, an individual who resides in either El Paso, El Paso County, or Monahans, Ward County, Texas.

by which El Paso agreed to buy surplus residue gas from Gulf's natural gasoline extraction plant in Crane County, Texas, called the Waddell Gasoline Plant.[4]

Effective November 1, 1957, Gulf transferred to Warren Petroleum Corporation, a wholly owned subsidiary, certain facilities including the Waddell Plant with its related gathering lines and the Gulf-El Paso residue gas purchase agreement dated January 26, 1951. Gulf entered into a percentage-type contract for the sale of casinghead gas from the Waddell lease with Warren Petroleum Corporation. Effective December 31, 1971, Warren Petroleum Corporation was merged into its parent corporation, Gulf Oil Corporation. From that point on the properties previously owned by Warren Petroleum Corporation have been operated in the name of Warren Petroleum Company ("Warren") as a division of Gulf.

On March 1, 1972, El Paso and Warren entered into an additional residue gas purchase agreement assuring El Paso of a continuing [271] supply of quantities of residue gas from the Waddell Gasoline Plant.[5] This agreement includes sales of residue gas attributable to certain gas wells operated by Gulf located on the Waddell lease.

[4] This residue gas purchase agreement, and subsequent amendments thereto, constitute Warren Petroleum Company's FPC Gas Rate Schedule No. 43. The Commission granted a certificate of public convenience and necessity authorizing the sale of residue gas to El Paso from the Waddell Gasoline Plant pursuant to Warren Petroleum Company's Rate Schedule No. 43 at Docket No. G-13445, 19 F.P.C. 1151 (1958). As indicated *infra* Warren Petroleum Company is a division of Gulf.

[5] This residue gas purchase agreement constitutes Warren's FPC Gas Rate Schedule No. 66. The Commission granted a certificate of public convenience and necessity authorizing the sale of residue

El Paso takes delivery of the surplus residue gas, which Warren sells and El Paso purchases pursuant to Warren's FPC Gas Rate Schedule Nos. 43 and 66, into its pipeline system at the outlet at the Waddell Gasoline Plant and transports it through its jurisdictional facilities for subsequent resale in interstate commerce.[6] El Paso purchases, transports, and resells approximately 60 million cubic feet of such surplus residue gas daily.

Of the surplus residue gas purchased by El Paso at the outlet of the Waddell Gasoline Plant, approximately 25 million cubic feet daily is attributable to production from wells on land leased by Gulf, *et al.* pursuant to the Waddell lease. All lessees other than Gulf make percentage-type sales to Warren of casinghead gas produced from the acreage covered by the Waddell lease. Since the merger of Gulf and Warren, Gulf no longer makes such sales.

By the terms of the Waddell lease, the leasehold estate expires fifty years after date of execution, which is July 14, 1975. Gulf, *et al.* sought to extend the termination date of the lease by either 4,661 or 4,286 days on the grounds that they are entitled to such additional days of production because of delays and interrup-

gas to El Paso from the Waddell Gasoline Plant pursuant to Warren's FPC Gas Rate Schedule No. 66 at Docket No. CI72-760 (issued July 22, 1974).

[6] At the following docket numbers, the Commission granted El Paso certificates of public convenience and necessity for the construction and operation of pipeline and compression facilities needed to transport gas from the Waddell Gasoline Plant: G-1629, 10 F.P.C. 644 (1951); G-2371, 13 F.P.C. 1008 (1954); G-10499, 16 F.P.C. 1354 (1956); and G-12580, 19 F.P.C. 393 (1958).

tions arising out of their compliance with regulatory orders of the Texas Railroad Commission. The Supreme Court of Texas resolved the issue in *Gulf Oil Corporation* v. *Southland Royalty,* 496 S.W.2d 547 (1973), by holding that the expiration date of the lease was not extended and the leasehold interest of Gulf, *et al.* shall therefore expire on July 14, 1975. The mineral rights, including the rights to natural gas production, by Texas law shall therefore revert to the reversionary interest owners on July 14, 1975.

Presently, the reversionary interest rights to the oil, gas, and other minerals produced from the acreage covered by the Waddell [272] lease are owned, held, or claimed in major portion by Exxon Company, U.S.A., a division of Exxon Corporation ("Exxon") and by Mineral Interest Owners. Mineral Interest Owners includes Southland Royalty Company ("Southland"), William Y. Penn, *et al.,* Trustees, and Trustees Under the Will of Warren Wright. Mineral Interest Owners together own approximately 81 percent of the acreage covered by the Waddell lease. Exxon owns approximately 14 percent of the acreage and the remaining 5 percent is owned by several other individuals and corporations.[7] All of the reversionary interest owners will together hereinafter be referred to as "Southland, *et al.*"

Upon termination of the Waddell lease and reversion of the mineral interest rights thereunder, Mineral

[7] A list of all said owners is attached to El Paso's original petition as Exhibit "C". All listed owners were served in this action by El Paso.

Interest Owners have agreed to sell to Intratex Gas Company ("Intratex"), for resale solely in intrastate commerce, the gas produced from the wells presently covered by the Waddell lease.[8] Exxon solicited proposals for the purchase of the gas attributable to its reversionary interest rights upon expiration of the Waddell lease for resale in intrastate commerce.[9]

[273] On January 17, 1975, El Paso filed a Petition for Issuance of a Declaratory Order with the Federal Power Commission ("Commission") in order to resolve three legal issues. These questions are basically whether either Warren, Gulf, *et al.,* or Southland, *et al.* must file for Commission abandonment authorization pursuant to Section 7(b) of the Natural Gas Act

[8] In their Petition to Intervene and Answer, Mineral Interest Owners state that Southland Royalty Company has entered into a contract to sell its interest in the gas to Intratex, an intrastate buyer of gas, which is a wholly-owned subsidiary of Houston Natural Gas Corporation, a distributor of gas in the City of Houston, Texas, and environs. They also state that the other Mineral Interest Owners have entered or in the near future will enter into similar contracts with Intratex.

By letter dated February 21, 1975, El Paso sent to the Commission articles from The Wall Street Journal, February 13, 1975, page 20, and The Oil Daily, February 13, 1975, page 1, which indicate that Southland concluded arrangements for the sale of its share of natural gas to Intratex at a base price of $1.90 per million British thermal units (Btu), plus fixed increases of 2.5 cents per million Btu on January 1, 1976, and at the end of each six months thereafter.

[9] Attached as Exhibit "E" to El Paso's original petition is a letter, dated October 1, 1974, addressed to Odessa Natural Corporation ("Odessa"), an intrastate pipeline affiliate of El Paso, from Exxon soliciting proposals for the purchase of Exxon's share of natural gas produced after July 14, 1975, from the various lands and leases presently leased to Gulf, *et al.* pursuant to the Waddell lease.

before Warren and Gulf, *et al.* may cease making their current sales for resale in interstate commerce and Southland, *et al.* may sell the gas currently attributable to the Waddell lease to natural gas companies doing business solely intrastate.[10] The purpose of the current proceeding is to resolve these issues.

Southern California Gas Company ("SoCal"), Mobil Oil Corporation ("Mobil"), Southwest Gas Corporation ("Southwest Gas"), the People of the State of California ("California"), Texaco, Inc. ("Texaco"), Exxon Corporation ("Exxon"), Mitchell Ener-

[10] The issues as stated in El Paso's original petition read as follows:

(i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on July 14, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf Oil Corporation and other lessees under said certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-type basis to Warren Petroleum Corporation for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act ("Act") and Section 154.91 of the Commission's Regulations Under the Natural Gas Act in order to cease such sales to Warren Petroleum Corporation and effectuate the transfer by reversion to Exxon Corporation, Southland Royalty Company, and other reversionary interest owners of the mineral rights under said certain 50-year fixed-term lease?

(ii) Given the facts set forth in (i), without prior Commission authorization, may Exxon Corporation, Southland Royalty Company, and other reversionary interests divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?

(iii) Given the facts set forth in (i), without prior Commission authorization, may Warren Petroleum Corporation reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

gy Corporation ("Mitchell"), Pacific Gas and Electric Company ("PGandE"), Gulf Oil Corporation ("Gulf"), and [274] Mineral Interest Owners filed petitions to intervene in this proceeding.[11] Only Gulf disputed El Paso's statement of facts as set forth in El Paso's petition for issuance of a declaratory order. Gulf in its petition to intervene[12] stated that there is no Warren Petroleum Corporation because Warren Petroleum Corporation has been merged into Gulf and subsequently became Warren Petroleum Company, a division of Gulf, and that there are therefore no sales of the gas in issue between Gulf and Warren. By its answer to Gulf's petition to intervene, El Paso accepted Gulf's clarification of the facts although it did not accept Gulf's conclusions and submitted that Warren Petroleum Company should be substituted for Warren Petroleum Corporation. Therefore, there appears to be no dispute among any of the parties to the instant proceeding as to the material facts.

On April 7, 1975, Texaco filed a Petition for Issuance of a Declaratory Order asking the Commission to resolve the single legal issue of whether a lessee, by making an interstate gas sale, can commit more than its real property interest (*i.e.*, its rights under its lease), thereby both encumbering forever the real estate and imposing upon the nonparticipating min-

[11] Petitions to intervene by SoCal, Mobil, Southwest Gas, California, Texaco, Exxon, Mitchell, PGandE, Gulf, and Mineral Interest Owners were filed on February 6, 1975, February 19, 1975, February 18, 1975, February 25, 1975, February 28, 1975, March 3, 1975, and March 3, 1975, respectively.

[12] Petition to Intervene and Response of Gulf Oil Corporation, Docket No. CP75-209 (filed March 3, 1975.)

eral fee owner the obligations of Section 7 of the Natural Gas Act. This single issue is substantially the same as those issues presented in El Paso's original petition. Texaco's petition involves another 50-year fixed term lease but covering property in Ector County, Texas. This lease was executed on August 7, 1925, between Gulf Production Company, as lessee, and Goldsmith, *et al.*, as lessors, (hereinafter referred to as the "Goldsmith lease")[13] and will expire on August 7, 1975. Texaco is one of the reversionary mineral interest owners under the Goldsmith lease. Upon expiration of the lease on August 7, 1975, the reversionary mineral interest rights thereunder will revert to Texaco and others. Gulf, the current lessee, is selling casinghead gas from this property to Phillips Petroleum Company ("Phillips"). Phillips is currently selling such gas to El Paso at the tailgate of [275] Phillips' Goldsmith Plant pursuant to Phillips' FPC Gas Rate Schedule Nos. 7, 32, 33, 497, and 483.[14]
respectively.

El Paso takes delivery of surplus residue gas into its pipeline system at the outlet at Phillips' Goldsmith Plant and transports it through its jurisdictional fa-

[13] A copy of this lease is attached to Texaco's petition as Exhibit "A".

[14] The Commission granted certificates of public convenience and necessity authorizing the sale of residue gas to El Paso pursuant to Phillips' F.P.C. Gas Rate Schedule Nos. 7, 32, 33, 483, and 497 at Docket No. G-2625, 16 F.P.C. 1440 (1956); Docket No. G-2625, 16 F.P.C. 1440 (1956); Docket No. G-3356, 16 F.P.C. 1442 (1956), amended by order issued June 12, 1961; Docket No. CI71-530 (issued April 23, 1971); and Docket No. CI72-590, 50 F.P.C. 390 (1973), supplemented by order issued July 22, 1974,

cilities for subsequent resale in interstate commerce.[15] El Paso purchases, transports, and resells approximately 103 million cubic feet of such surplus residue gas daily. Approximately 18 million cubic feet daily of such surplus residue gas is attributable to production from wells on land in Ector County leased by Gulf and others pursuant to the Goldsmith lease.

The issues to be resolved under Texaco's petition as restated by El Paso are basically whether Gulf, Phillips or Texaco must file for Commission abandonment authorization pursuant to Section 7(b) of the Natural Gas Act before Phillips and Gulf may cease making their current sales of natural gas for resale in interstate commerce and Texaco as reversionary interest owner may sell the gas currently attributable to the Goldsmith lease to natural gas companies other than Phillips for resale in intrastate commerce.[16]

[15] At the following docket numbers, the Commission granted El Paso certificates of public convenience and necessity for the construction and operation of pipeline and compression facilities through which El Paso transports gas from Phillips' Goldsmith Plant in interstate commerce: G-655, 5 F.P.C. 115 (1946); G-1019, 8 F.P.C. 726 (1949); and G-1051, 7 F.P.C. 908 (1948).

[16] The issues as stated in El Paso's answer to Texaco's petition read as follows:

> (i) Given the fact that, according to Texas law, a certain 50-year fixed term lease automatically terminates on August 7, 1975, and the mineral rights thereunder revert to the reversionary interest owners, must Gulf and any other lessees under a certain 50-year fixed term lease, who have been selling gas produced from said lease on a percentage-of-the-proceeds basis to Phillips for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Phillips and effectuate the transfer by reversion to

[276] On June 3, 1975, the Commission issued an order consolidating these two proceedings for purposes of briefing and decision. Permission to intervene [17] was granted to Exxon, Mineral Interest Owners, Gulf, SoCal, Southwest Gas, Mobil, Texaco, Mitchell, El Paso, Phillips, Northwest, and California.

As stated in its order of June 3, 1975, the issues raised by El Paso's petition to be resolved by the Commission are:

(1) May Southland, *et al.*, divert natural gas from interstate commerce to intrastate commerce without prior permission and approval of the Commission?

(2) Must Gulf, *et al.*, obtain abandonment permission and approval in order to cease sales to Warren and to effectuate a transfer to Southland, *et al.*?

(3) May Warren reduce its sales to El Paso to the extent such sales are attributable to production

Texaco and other reversionary interest owners of mineral rights under said 50-year fixed term lease?

(ii) Given the facts set forth in (i), without prior Commission authorization, may Texaco and other reversionary interest owners divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?

(iii) Given the facts set forth in (i), without prior Commission authorization, may Phillips reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the lease in question?

[17] Petitions to intervene in Docket No. CI75-594 were filed by El Paso, Gulf, Phillips, Mineral Interest Owners, Northwest Pipeline Corporation ("Northwest"), and California.

from the subject leasehold property without prior Commission permission and approval?

[277] The Commission's order of June 3, 1973, also includes the issue as restated by Texaco; that is, whether a lessee by making an interstate gas sale can commit more than its real property interest (*i.e.*, its rights under its lease), thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act.

By said order of June 3, 1973, the Commission ordered that initial briefs on the questions presented in the consolidated proceeding be filed by any party to the proceeding and the Commission Staff on or before June 11, 1975. The date set for reply briefs was June 18, 1975.

On June 5, 1975, in response to a motion to revise the briefing schedule filed by Exxon, the Commission gave notice that the briefing schedule was revised to allow all parties to file simultaneous briefs on June 20, 1975. The date for reply briefs was cancelled. By order issued June 13, 1975, the Commission established a June 25, 1975 filing date for reply briefs.

II.

Statement of the Issues

(i) Given the fact that, according to Texas law, two 50-year fixed term leases automatically terminate on July 14, 1975, and August 7, 1975, respectively, and the mineral rights thereunder revert to the reversionary interest owners, must

Gulf and any other lessees under the certain 50-year fixed term leases, who have been selling gas from said leases on a percentage-of-the-proceeds basis to Warren and Phillips for resale in interstate commerce, obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under the Natural Gas Act in order to cease such sales to Warren and Phillips and effectuate the transfer to Southland, *et al.* and Texaco, respectively, and other reversionary interest owners of mineral rights under said 50-year fixed term leases?

(ii) Given the facts set forth in (i), without prior Commission authorization may Southland, *et al.*, Texaco and other reversionary interest owners divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?

(iii) Given the facts set forth in (i), without prior Commission authorization, may Warren and Phillips reduce their sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the leases in question?

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III.

Summary of El Paso's Position

El Paso is of the firm belief that Section 7(b) abandonment authorization is required before the lessees under the two leases (hereinafter included in the reference "Gulf, *et al.*") may cease making sales of cas-

inghead gas to Warren and Phillips and before Warren and Phillips may reduce sales of residue gas to El Paso. The gas produced from acreage covered by these leases has been dedicated to interstate commerce and cannot be withdrawn without prior authorization by the Commission. Furthermore, all the reversionary interest owners under both leases (hereinafter included in the reference "Southland, *et al.*") are bound by the prior dedication of the natural gas produced from acreage which will revert to them upon expiration of the leases. They cannot discontinue sales presently being made for resale in interstate commerce without first obtaining permission of the Commission pursuant to Section 7(b) abandonment procedures. It is El Paso's position that the interest of the public in stability and continuity of service during the present time of critical gas shortages makes the requirement of abandonment authorization in this instance imperative.

IV.

Argument

Section 7(b) of the Act[13] requires that no natural gas company abandon any service rendered by facilities within the jurisdiction of the Commission without

[13] Section 7(b) of the Act provides:

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

the Commission's prior approval. 15 U.S.C. Section 717f(b) (1964). The language of the section is unequivocal, bluntly foreclosing any abandonment, whether justified or not, without this prior authorization. *Farmland Industries* v. *Kansas-Nebraska Natural Gas Co.*, 349 F. Supp. 670, 677 (D. Neb. 1972), *aff'd.* 486 F. 2d [279] 315 (8th Cir. 1973). The jurisdiction of the Commission attaches to sales of natural gas which are destined for resale in interstate commerce. Section 1(b); 15 U.S.C. Section 717(b) (1964). Once natural gas begins to flow in interstate commerce, it thereby becomes dedicated to interstate commerce and Section 7(b) of the Act provides the exclusive means by which the seller of gas may terminate service. *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137 (1960).

The purpose of the requirement of Section 7(b) is to protect the interest of the public in the sale of natural gas. *Transcontinental Gas Pipe Line Corp.* v. *FPC*, 488 F.2d 1325 (D.C. Cir. 1963), *cert. denied*, 414 U.S. 921 (1974). This interest is recognized to be greater than and to transcent the interests of individual parties in their own private arrangements. *Id.* It is also because of this overriding public interest that "[a] regulatory statute such as the Natural Gas Act would be hamstrung if it were tied down to technical concepts of local law." U*nited Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392, 400 (1965)). Thus, *Gulf Oil Corporation* v. *Southland Royalty Co.*, 496 S.W.2d 547 (Tex. 1973) did no more than to decide when the lease held by Gulf and other lessees of the Waddell property would terminate. The holding in that case, that the 50-year fixed term lease automatically terminates on July 14, 1975, at which time the

mineral rights thereunder revert to the reversionary interest owners, in no way affects the necessity for Commission abandonment authorization pursuant to Section 7(b) before sales of the gas to the present purchasers may cease. It is undisputed that upon termination of the lease at least some of the reversionary interest owners have arranged to sell natural gas previously dedicated to interstate commerce intrastate purchasers. Such an action is precisely what the Natural Gas Act has proscribed if accomplished without prior Commission authorization.

I. Gulf, *et al.* may not terminate their sales of natural gas without first obtaining abandonment authorization form the Commission.

A. The issue has not previously been adjudicated.

It should first be noted that the issue of whether a lessee, selling natural gas in interstate commerce from wells held under a fixed term lease, must obtain Commission authorization pursuant to Section 7(b) of the Natural Gas Act to terminate such sales upon the expiration of the lease, has not previously been adjudicated. As indicated above, *Gulf Oil Corp.* v. *Southland Royalty Co., supra,* did not consider this issue in its determination of when the lease in question terminates.

Furthermore, no other case appears to have dealt squarely with this point. Of particular note is *El Paso Natural Gas Co.* v. *Perry R. Bass,* 48 F.P.C. 1269 (1972). This case dealt with the issue of whether a producer, who obtained reconveyance of a fractional working interest pursuant to a farmout agreement,

was free to divert all of the gas, [280] previously sold by the farmoutee to a natural gas company for resale in interstate commerce, to another company, also for resale in interstate commerce, without Section 7(b) authorization. The Commission held that the producer's prior royalty interest did not make him a seller of natural gas in interstate commerce for resale nor did his conversion from a royalty interest to a working interest; therefore, the producer was free to sell his share of gas as he wished without abandonment authorization. However, nowhere in the opinion does the Commission indicate that the farmoutee, a prior working interest owner as are Gulf, *et al.*, was also free to cease sales of natural gas, which it had previously dedicated to interstate commerce, without first going through the required Section 7(b) procedures.[19]

B. Gulf, *et al.*'s sales of casinghead gas and gas well gas are sales of natural gas in interstate commerce for resale as defined by the Natural Gas Act.

The jurisdiction of the Commission extends to those "natural-gas companies" which are "engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." 15 U.S.C. Section 717a (1964). Prior to abandonment of those facilities and services which come within the jurisdiction of the Commission, Section 7

[19] In fact, Shell Oil Co. ("Shell"), the farmoutee in Bass, was required to and did file a notice of partial cancellation of its rate schedule to reflect Bass' conversion of his overriding royalty interest to a one-half working interest. The Commission granted Shell's request for partial cancellation.

(b) authorization must be obtained. 15 U.S.C. Section 717f. The lessees in the instant case are "natural-gas companies" within the meaning of the Act and their sales of casinghead gas are within the jurisdiction of the Federal Power Commission.

The sales by the lessees of natural gas[20] are "sale(s) in interstate commerce of such gas for resale." The fact that the gas sold at the wellhead is not committed on its interstate journey until some point after the original sales take place is irrelevant as long as the gas is ultimately delivered in interstate commerce. *Continental Oil Company* v. *FPC,* 247 F.2d 904 (5th Cir. 1957). Admittedly, gas sold by [281] Gulf, *et al.* ultimately enters El Paso's interstate pipelines.[21] On facts similar to those in the present situation the court in *Deep South Oil Co.* v. *FPC, supra,* determined that where gas produced from seller's wells, at least in part, was resold to consumers outside the state, seller was making "sales for resale" within the meaning of the Natural Gas Act, notwithstanding the fact that such gas, in the course of the interstate transmission, passed through a local processing plant. By virtue of the fact that the gas from seller's wells continuously flowed into

[20] "Casinghead gas" is "natural gas" within the meaning of the Natural Gas Act. 15 U.S.C. Section 717a; Deep South Oil Co. of Tex. v. FPC, 247 F.2d 882 (5th Cir. 1957), *cert. denied,* 335 U.S. 930 (1958).

[21] The further fact that the gas sold by Gulf, *et al.* may be used primarily for the manufacturing of gasoline does not bring the transaction outside the jurisdiction of the Commission, for the fact that some of the gas sold by the lessees is resold and eventually crosses interstate lines brings the entire sale within the auspices of the Commission. Shell Oil Co. v. FPC, 247 F.2d 900 (5th Cir. 1957).

a gathering system and became part of a mass of gas which moved continuously from the gathering system into a processing plant, and from the outlet of such plant to interstate destinations, sales at and from the outlet of such plant to interstate destinations, sales at the well were also sales in "interstate commerce" within the meaning of the Natural Gas Act. *Id.* The fact that the residue gas actually moving in interstate commerce may be of small volume in relation to the totality of gas purchased by El Paso does not affect the interstate nature of the entire sale. "The Commission's jurisdiction attaches to interstate sales of any size." *Warren Petroleum Corp.* v. *Sun Oil Co.*, 48 F.P.C. 881, 886 (1972). *See Harper Oil Co.* v. *FPC*, 284 F.2d 137 (10th Cir. 1960). It is the actual physical movement of the gas in interstate commerce along with its eventual resale which are the important criteria in determining Commission jurisdiction. *See People of the State of California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965).

C. The termination of the leases under which Gulf, *et al.* have operated wells and sold natural gas therefrom for resale in interstate commerce does not eliminate the need to obtain abandonment authorization prior to cessation of such sales.

"The principle is well established that dedication of reserves for sale in interstate commerce occurs at least as soon as deliveries commence, and that once service is begun, the producer cannot terminate the service without Commission approval." *Cumberland Natural Gas Co.*, 34 F.P.C. 132, 136 (1965). The key term is "service" and the Commission has "long

drawn a distinction between the underlying service to the public a natural gas company performs and the specific manifestation . . . which that service takes at a given moment." *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 152 (1960). As early as 1942 the Commission held that the continuing obligation to perform "service" imposed by the Act outlasts the term of a seller's original contract of sale so that [282] abandonment of service after the expiration of such contract had to have Commission approval under Section 7(b). *United Gas Pipe Line Co.*, 3 F.P.C. 3, 9 (1942), *cited in, Sunray Mid-Continent Oil Co.* v. *FPC, supra.*

A lease is merely another manifestation of a private relationship which cannot be allowed to interfere with the duty of continuing service imposed by the Natural Gas Act. *Bill J. Graham, et al.*, Docket No. CI75-626, *et al.*, —— F.P.C. —— (issued June 16, 1975). It is the initial volitional decision to purchase and sell which subjects seller and buyer to duties transcending personal contractual or other arrangements. *United Gas Pipe Line Co.* v. *FPC*, 350 F.2d 689, 694 (5th Cir. 1965), *aff'd.* 385 U.S. 83 (1966). As pointed out by the court in *Hunt* v. *FPC*, 306 F.2d 334, 342 (5th Cir. 1962), *rev'd on other grounds,* 376 U.S. 515 (1964), the rights of a seller of natural gas may be temporary, but his duties are not. The dedication of natural gas to interstate commerce is *in rem* rather than *in personam* and thus, "[l]ike the ancient covenant running with the land, the duty to continue to deliver and sell flows with the gas from the moment of the first delivery down to the exhaustion of the reserve, or until the Commission on appropriate terms,

permits cessation of service under Section 7(b), 15 U.S.C. Section 717f (b)." *Id.* Without the proper authorization, service must continue even if this might place a hardship on the seller or give the buyer an "undue preference or advantage." ***Farmland Industries*** v. ***Kansas-Nebraska Natural Gas Co.***, 349 F. Supp. 670, 677 (D. Neb. 1972), *aff'd.* 486 F.2d 315 (8th Cir. 1973); *see also Harper Oil Co.* v. ***FPC, supra.***

The lessees have dedicated the natural gas produced by their wells to interstate commerce. They have brought themselves within the jurisdiction of the Federal Power Commission and thus may not cease making sales of the gas from these wells without abandonment authorization.[22] Regardless of the termination of the lease, service must continue.

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[22] Section 154.91 of the Commission's Regulations under the Act states that natural gas producers which make sales on a percentage of the proceeds basis of natural gas to processing plant operators are subject to the requirements of Section 7(b) of the natural gas act. As noted above, lessees here make percentage sales to Warren and Phillips. Therefore, they must comply with Section 7(b) before they can abandon this service. Section 154.91 states:

> (e) *Percentage sales.* Where a producer sells to the operator of a processing plant at a price which is a percentage of the proceeds from the resale of residue gas, the plant operator shall make all filings required to cover the sale by such producers, which filings shall include a list of the producers from whom the natural gas is purchased, showing the per centum of the resale price received by each from such sales of gas. At the close of each calendar year or at the end of each twelve-month period following the date of initial filing the operator shall submit a further statement listing any changes in the producers from whom the gas is purchased or in the per centum they receive. In cases of percentage sales by producers covered by this paragraph, the producers may not file rate schedules, rate changes, or certificate applications, whether or

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II. Warren and Phillips may not reduce their sales in interstate commerce of residue natural gas to El Uaso, the present level of which is attribuable in large part to production from the leases in question, without prior Commission abandonment authorization.

A. This issue was not settled by *Gulf* v. *Southland Royalty.*

As with the lessees, the duties of Warren and Phillips to continue their present level of sale of natural gas in interstate commerce for resale was not settled wih the decision of the Supreme Court of Texas in *Gulf Oil Corp.* v. *Southland Royalty Co., supra.* The Supreme Court of Texas decided only that the Waddell lease will automatically terminate on July 14, 1975. The Supreme Court of Texas did not decide that the continuing duty to sell gas covered by the Waddell lease shall also automatically terminate on July 14, 1975.

B. Warren's and Phillips' sales of residue gas come within the jurisdiction of the Commission.

Warren and Phillips have for several years been selling large quantities of residue natural gas to El Paso whereupon it enters El Paso's interstate system to be resold in interstate commerce. There can be no

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not the filings by operator as herein required have been made. However, such producer is fully subject to applicable provisions of the Natural Gas Act, including sections 5 and 7(b).

doubt then that Warren and Phillips are natural gas companies within the meaning of the Act and that these sales to El Paso are likewise jurisdictional. *See People of the State of California* v. *Lo-Vaca Gathering Co., supra;* 15 U.S.C. Section 717(b) (1964).

[284]

C. Warren and Phillips must obtain abandonment authorization in order to reduce sales of natural gas which have been dedicated to interstate commerce.

A reduction in the quantity of natural gas delivered is an abandonment of service. *Panhandle Eastern Pipe Line Co.* v. *Michigan Consolidated Gas Co.,* 177 F.2d 942 (6th Cir. 1949); *Dixie Pipe Line Co.,* 14 F.P.C. 106 (1955). If Warren and Phillips are allowed to cease selling to El Paso residue gas attributable to the leases in question the reduction will indeed be substantial. Sales from Warren alone will be reduced nearly one-half. (Approximately 25 million cubic feet per day of the 60 million cubic feet per day of surplus residue gas which El Paso purchases at the tailgate of the Waddell Plant reflects gas production attributable to Gulf's leasehold estate under the Waddell lease.) This residue gas is natural gas which has been dedicated to interstate commerce by the sale to and transportation by El Paso in interstate commerce.

The sale of this natural gas may be abandoned only upon proper Commission authorization. *Sunray Mid-Continent Oil Co.* v. *FPC, supra.* Warren and Phillips have a duty to continue this service. *Id.* Their duty cannot be abrogated by either the termination

of the lessees' leasehold interests or any sales contracts between Gulf, *et al.* and either Warren or Phillips. *See United Gas Pipe Line Co.* v. *FPC, supra.*

Neither can the nature of Warren's and Phillips' contracts with El Paso, which are for the sale of surplus residue gas, limit the duty they have to continue selling gas which they have dedicated to interstate commerce. It is the actual physical movement of the gas across state lines which is determinative. Once natural gas has become jurisdictional it cannot cease to be so as the result of either prior or subsequent agreements between the parties. *People of the State of California* v. *Lo-Vaca Gathering Co., supra.* "The service . . . is distinct from the contract." *Sunray Mid-Continent Oil Co.* v. *FPC, supra.* Just as service must continue past the expiration of the sales contract, so too, once dedication has occurred, must the level of service continue despite the terms of any specific contract.

El Paso does not contend that mere fluctuations in the amounts of surplus residue gas sold by Warren and Phillips to El Paso require abandonment authoribation. However, El Paso does contend that a permanent reduction in sales by Warren and Phillips of natural gas presently flowing in interstate commerce does require abandonment authorization. The diversion of natural gas produced from the Waddell and Goldsmith leases upon the termination of those leases will result in a permanent reduction in the sales of gas by Warren and Phillips to El Paso.

III. Southland, *et al.* must obtain abandonment authorization in order to discontinue sales of natural gas dedicated to interstate commerce by Gulf, *et al.*

[285]

A. *El Paso Natural Gas Co.* v. *Perry R. Bass* must be confined to its facts.

As indicated above, in *Perry R. Bass, supra,* a producer (*i.e.* Bass) pursuant to terms of a farmout agreement with Shell exercised his option to convert his overriding royalty interest into a 50 percent working interest. Although Shell had been selling all of the natural gas produced from a well to El Paso for resale in interstate commerce, the producer, after converting his overriding royalty interest into a working interest, sought to sell his 50 percent share of the production to Natural Gas Pipe Line Company ("Natural") also for resale in interstate commerce. The Commission held that Bass was free to sell his shares of gas to Natural without first obtaining abandonment authorization since neither his prior royalty interest nor his conversion from a royalty interest to a working interest made him a seller of natural gas in interstate commerce.

Factually, the situation in *Bass* was quite different from the one under present consideration. In this case, the entire output of the wells is proposed to be diverted to intrastate commerce whereas in *Bass* the producer merely chose to sell to another interstate pipeline company for resale in interstate commerce. Furthermore, Bass and Shell executed an agreement specifically prohibiting Shell from disposing of Bass'

share of the gas. Apparently no such agreement was executed between Gulf, *et al.*, the lessees, and Southland, *et al.*, the reversionary interest owners.

Most important, however, is the difference in the instruments by which the respective parties obtained their interests. The arrangement the parties used in *Bass* was the farmout agreement. In supporting its decision in *Bass,* the Commission heavily stressed that "[f]armouts serve the public interest, for they are a means whereby an available drilling site is placed with a person having available risk capital to the end that the site is explored. Without farmout arrangements, exploration will be limited, for exploration would then occur only when there is a coincidence of site availability and exploration risk capital in one producer." *Id.* at 1277. The Commission felt that if abandonment authorization was required of the producer, "[t]he future use of farmout agreements in the natural gas producing industry would be discouraged," a result "clearly contrary to the public interest." *Id.* at 1278.

However, the instrument involved in this case, the fixed term lease, does not particularly serve the public interest. In fact, on page 5 of the Petition to Intervene and Answer of Mineral Interest Owners to Petition for Declaratory Order filed herein, these reversionary interest owners point out that "[s]uch term oil and gas leases now are extremely rare, in fact almost unique . . . and . . . 'of no practical importance' in Texas. Walker, *The Nature of Property Interests Created by an Oil Gas Lease in Texas,* 7 Tex. L. Rev. 1, 15 (1928)." [286] Thus it is unlikely that requiring abandonment authorization in this instance would pose a threat to the public interest.

For these reasons it is urged that the holding in *Bass* be limited to the factual situation presented in that proceeding. The stated goals of the Commission in *Bass* were "to regulate through application of the Act in such manner as to encourage exploration, development, and dedication of natural gas to the interstate market." *Id.* at 1277. Because of the factual distinctions between *Bass* and the instant proceeding, these goals can only be furthered in the present situation by *requiring* abandonment authorization.

B. The reversionary interest owners are bound by the prior dedication of the gas reserves to interstate commerce.

As the court in *Mobil Oil Corp.* v. *FPC,* 463 F.2d 256, 260 (D.C. Cir. 1971), *cert. denied,* 406 U.S. 976 (1972) pointed out, "the lease term gives the lessee all possessory interests in gas produced during the life of the lease, including full right of sale." As a result of their sales of casinghead gas, some of which is eventually resold in interstate commerce, Gulf, *et al.* dedicated all of the gas produced from their leasehold interest to interstate commerce. A gas flow, once jurisdictional, remains so until abandonment is permitted. *Sunray Mid-Continent Oil Co.* v. *FPC, supra.* This is so even though ownership of the gas may pass into the hands of successors in interest. *See Cumberland Natural Gas Co.,* 34 F.P.C. 132 (1965).

"Each successor, by stepping into the shoes of his predecessor, takes the properties and sales subject to any benefits or infirmities inherent therein." *Graridge Corp.,* 30 F.P.C. 1156 (1963). Until termination of the lease, Gulf, *et al.* are in possession of the entire

interest in the natural gas produced. Upon termination, the reversionary interest owners will succeed to this interest. They must take this interest subject to the prior dedication of the gas by the lessees.

It is not always the case that a particular producer must himself choose to sell gas in interstate commerce and commence deliveries to come within the Commission's jurisdiction. This point is well illustrated by the recent Commission decision in *Blair-Vreeland*, Op. No. 724, —— F.P.C. ——, (issued March 18, 1975). John B. Vreeland doing business as Blair-Vreeland ("Vreeland") had entered into a farmout agreement with Exxon covering 480 acres of land in Duval County, Texas. He proceeded to drill two wells whereupon he was advised by the Tennessee Gas Pipe Line Company ("Tennessee") that the gas from these wells had been dedicated to interstate commerce as a result of sales to Tennessee by Exxon, Vreeland's predecessor in interest. Vreeland contracted to sell the gas from both wells to the Lo-Vaca Gathering Company for resale in intrastate commerce. The Commission found that the gas from these wells had been dedicated to Tennessee as a result of its contract with [287] Exxon and that Vreeland was bound by this previous dedication. Even though Vreeland had not himself made sales of natural gas in interstate commerce for resale, the Commission, by instead looking at the prior history of the acreage and reservoirs involved, held that Vreeland as successor in interest could not withdraw any portion of dedicated and certificated acreage from the dedication. The important factor was the actual flow of gas in interstate commerce rather than in whom ownership was vested at the moment. Vreeland

had never been a "willing seller" in interstate commerce yet he could only attempt to avoid the prior dedication of gas from his wells by means of Section 7(b) abandonment procedures.

On June 11, 1975, the Commission issued a decision, *Mitchell Energy Co.*, Op. No. 733, —— F.P.C. —— (hereinafter cited as *Mitchell*), which further supports its holding in *Blair-Vreeland, supra.* The Commission in *Mitchell* held that the assignment of an interest in a gas producing field could not defeat the fact that all of the natural gas therefrom had previously been dedicated to interstate commerce. The assignee was held duty bound to continue service even after the expiration of the assignor's sales contract which assignee had assumed. This was true whether the gas was produced from the new wells drilled by the assignee or from those developed by his predecessor in interest.

The fact of dedication "from all available reserves" was determined from a 1949 sales contract between assignor Gray Wolfe and Tennessee Gas Pipeline Co. Even though Mitchell had not itself made sales to Tennessee, the Commission looked to the history of the properties involved to find that Mitchell was bound by the prior dedication. In summarizing its position the Commission stated,

> ". . . what is controlling is the service that Gray Wolfe was rendering. This does not depend on the continuation of the original sales contract of 1949, but the contract serves to indicate the type of service that was to be rendered and which was certificated by the Commission. Here the contract

> plainly included all gas produced from Gray Wolfe's interests in the Pinehurst Field. Gray Wolfe was required to render that service and to continue rendering that service. . . . Therefore all sales made or to be made by Mitchell from the Gray Wolfe reserves in the Pinehurst Field are subject or will be subject to the Commission's jurisdiction and Mitchell must continue to sell such gas in interstate commerce until relieved by action of the Commission under Section 7(b) of the Natural Gas Act." *Id.* at 6.

Likewise, the reversionary interest owners in this case must obtain abandonment authorization before they may cease sales of natural gas from reserves dedicated to interstate commerce by Gulf, *et al.* As long as the lessees have not obtained abandonment authorization they are [288] required to continue rendering their service of selling natural gas for resale in interstate commerce. Southland, *et al.* take their interest subject to this duty since the gas reserves in issue are already under the Commission's jurisdiction and will remain so until abandonment is authorized.

IV. The public interest requires that abandonment authorization be obtained before sales the current purchaser may cease.

"The proscription of abandonment without prior Commission approval was designed to ensure stability and continuity of service." *Farmland Industries* v. *Kansas-Nebraska Natural Gas Co., supra* at 680. As concern over the present "energy crisis" becomes more and more acute, these goals become increasingly im-

portant. To hold that abandonment authorization is not required in this instance would be to "shift from the governmental agency to a private interested party the determination of this critical problem of the needs of the public, not alone for today, but for the explosive tomorrow." *United Gas Pipe Line Co.* v. *FPC, supra* at 697.

One goal of the Act is to allow competing interests to come forward in a hearing before the Commission to enable the Commission to arrive at a decision as to whether an abandonment would be in the public interest. In *Transcontinental Gas Pipe Line Gas Corp.* v. *FPC,* 488 F.2d 1325 (D.C. Cir. 1973), *cert. denied,* 417 U.S. 921 (1974) (hereinafter cited as *La Gloria Field*) the court held that since "the public interest is the ultimate criterion under Section 7(b)," the Commission must afford a full comparative needs hearing regardless of any contractual arrangements entered into by the parties involved.

La Gloria Field involved two pipeline companies, Transcontinental Gas Pipe Line Corporation ("Transco") and Natural Gas Pipeline Company of America ("Natural") which were engaged in the transportation and sale of natural gas in interstate commerce. Both companies purchased their gas from La Gloria Field producers. Upon discovering that they could not continue to meet the requirements of both companies and still have adequate gas for other needs, the producers entered into an agreement with Natural, which was approved by the Commission, providing for a substantial reduction in deliveries to Natural until its contract expired. In return, the producers agreed to dedicate all the natural gas reserves in the La Gloria

Field to Natural and to seek abandonment of all deliveries to Transco when its contract expired.

At the termination of Transco's contract, abandonment proceedings were instigated and the Commission approved abandonment, according dispositive weight to the private contractual arrangement absent a showing of countervailing "unequivocal public necessity." *Id.* at 1329. The court held that such rigid deferral to a contractual arrangement was "an inadequate means to assure vindication of the transcendent [289] interests of the public." *Id.* The case was remanded to the Commission for further proceedings so that the comparative needs standard enunciated by the court in *Michigan Consolidated Gas Co.* v. *FPC,* 283 F.2d 204 (D.C. Cir. 1960), *cert. denied,* 364 U.S. 913 (1960), could be applied. The court in *Michigan Consolidated* established the fundamental principle that all factors relevant to the determination of which course of action best promotes the overall public interest must be fully considered, giving primary importance to a comparison of the needs of the competing natural gas systems and the public markets they serve. *Id.* at 214. The Commission should also take into consideration "economic effect on the pipelines and their consumers, the presumption in favor of continued service and the relative diligence of the pipelines in providing for adequate natural gas supplies." *La Gloria Field, supra* at 1330.

The important public interest considerations which were stressed by the court in both *Lo Gloria Field* and *Michigan Consolidated* can only be developed during the course of an abandonment authorization proceeding as set forth in Section 7(b) of the Act and

the corresponding regulations. "Once facilities are placed into operation under authority of the Natural Gas Act, justifiable public reliance attaches to their continued operation under Section 7(b), for public rights and responsibilities arise upon the dedication of facilities to the public use and these rights cannot be protected nor these responsibilities acquitted by the individual natural gas companies." *Continental Oil Co.* v. *United Gas Pipe Line,* 31 F.P.C. 1079, 1081 (1964), *aff'd.* 350 F.2d 689 (5th Cir. 1965), *aff'd.* 385 U.S. 83 (1966). To ensure that there is no betrayal of "justifiable public reliance" nor an abdication of responsibility, it is essential that the Commission require abandonment proceeding prior to the cessation of sales of natural gas which enter El Paso's interstate pipelines. It is especially important that little used, impractical instruments such as the fixed term leases in question not be allowed to defeat the goals of Section 7(b).

V.

Conclusion

Wherefore, for the foregoing reasons, El Paso Natural Gas Company respectfully requests that the Commission hold that sales of natural gas presently being sold for resale in interstate commerce may not cease as the result of the termination of two 50-year fixed term leases without prior Commission authorization pursuant to Section 7(b) of the Natural Gas Act. El Paso respectfully requests that the Commission hold that, before current sales may cease and the natural gas diverted to intrastate commerce, such authorization must be sought and obtained by (i) Gulf, *et al.*

as lessees under said leases and currently sellers of natural gas produced therefrom for resale in interstate commerce, (ii) Warren and Phillips as sellers of residue natural gas to El Paso for resale in interstate commerce, and (iii) Southland, *et al.* [290] as reversionary mineral interest owners who, upon termination of the leases in question, will have full rights to the natural gas in issue.

Respectfully submitted,

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(VERIFICATION OMITTED IN PRINTING)

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209, *et al.*

EL PASO NATURAL GAS COMPANY, ET AL.

(FILED JUNE 20, 1975)

Initial Brief of Exxon Corporation

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[294]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209, *et al.*

EL PASO NATURAL GAS COMPANY, ET AL.

Initial Brief of Exxon Corporation

I

INTRODUCTION

These consolidated proceedings involve petitions by El Paso Natural Gas Company (El Paso) and Texaco Inc. (Texaco) for a declaratory order to determine whether either the mineral fee owners or their lessees must obtain abandonment authorization upon the expiration of certain 50-year fixed term oil and gas leases as a result of the lessees' sales in interstate commerce for resale of production from the leasehold estates during the lease terms.[1] Since Exxon Corporation (Exxon) is one of the mineral fee owners to which El Paso's petition relates, this brief will be

[1] In Texaco's petition, it is requested that the declaratory order also determine whether the processor, which purchases the lessee's production under a percentage arrangement and resells the gas in interstate commerce, must obtain abandonment authority upon expiration of the lease term. While this question was initially presented by El Paso's petition, it was subsequently pointed out by the lessee, and agreed to by El Paso, that the processor is a corporate division of the lessee. As a result there is no sale by the lessee to the processor for which abandonment authority might be required. Consequently, El Paso's petition is limited to the questions of the need for abandonment authority by the mineral fee owners and the lessee.

limited to the issues presented by El Paso's petition. Exxon has never sold or delivered any production from its mineral fee estate to El Paso and Exxon has no contractual obligation to do so. In no sense has Exxon dedicated its property to interstate commerce. Accordingly, Exxon denies that it requires abandonment authorization upon the expiration of the 50-year fixed lease term. To conclude otherwise would deny Exxon the full enjoyment of its mineral fee estate at lease expiration and thus deprive it of its property without due process of law in violation of the Fifth Amendment to the Constitution. Also, as we shall show later, the lessee, Gulf Oil Corporation (Gulf), is not required to secure [295] abandonment authorization regarding production from the mineral fee estate.

II

FACTUAL AND PROCEDURAL SUMMARY

On January 20, 1975, El Paso filed its petition in Docket No. CP75-209 requesting the issuance of a declaratory order regarding a 50-year fixed term oil and gas lease between Gulf and certain mineral fee owners, dated July 14, 1925, as amended March 16, 1926.[2] By such lease, the mineral fee owners granted Gulf the right for a fixed term of 50 years to explore and develop the minerals underlying certain properties located in Crane County, Texas. Pursuant and subject to its specifically limited lease authority, Gulf developed, *inter alia,* natural gas production and arranged

[2] Copies of the lease and amendment are appended to El Paso's petition for a declaratory order. The original lease, as amended, is between Gulf and Waddell, *et al.* Exxon subsequently succeeded to a portion of the mineral fee interests of Waddell, *et al.*

to sell it to El Paso. The sale of the gas produced by Gulf is made to El Paso at the outlet of the Waddell Plant located in Crane County pursuant to two surplus residue gas sales contracts dated January 26, 1951, and March 1, 1972.[3]

On July 14, 1975, the 50-year fixed term oil and gas lease expires by its own terms and Gulf's leasehold estate in the mineral rights is extinguished. The expiration of the lease and the concomitant extinguishment of Gulf's leasehold estate on that date has been conclusively decided by the Supreme Court of Texas in *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W. 2d 547 (1973). With the termination of the lease on July 14, 1975, Gulf will, by operation of law, no longer have any right to sell gas production from the properties that were subject to the lease. Instead, that right will belong exclusively to Exxon and the other mineral fee owners. Neither Exxon, nor the other mineral fee owners, has contracted to sell its gas to El Paso. In its petition, El Paso questions whether Exxon and the other mineral fee owners and Gulf each have to obtain Commission authority to abandon the delivery of gas to it upon expiration of the lease. In effect, El Paso seeks to acquire that which it has no contractual right to purchase and which has never been dedicated to it.

[296] On February 7, 1975, the Commission gave notice of El Paso's petition for a declaratory order.

[3] According to Gulf's Petition to Intervene and Response in these proceedings these two contracts and their related Commission certificate authorizations are currently in the name of its affiliate, Warren Petroleum Company, a Division of Gulf Oil Corporation (Warren). Since Warren is a division of Gulf there is no sale prior to the delivery of the gas to El Paso.

Thereafter, Exxon, the other mineral fee owners, and Gulf each filed on or about March 3, 1975, their respective answers to El Paso's petition denying that abandonment authority is required by any of them upon lease expiration.

On April 8, 1975, Texaco filed its petition for a declaratory order in Docket No. CI75-594. According to its petition, Texaco is a mineral fee owner under another 50-year fixed term oil and gas lease with Gulf involving properties in Ector County, Texas. The gas produced from the leased properties is sold by Gulf to Phillips Petroleum Company which processes such production in its Goldsmith Plant prior to reselling it to El Paso. Unlike El Paso, Texaco maintains in its petition that no abandonment authority is required at the expiration of its 50-year fixed term lease in August, 1975.

By order issued June 3, 1975, the Commission consolidated the El Paso and Texaco petitions for determination.[4] No hearing was deemed to be required. Instead, the parties are each required to file simultaneous

[4] The Commission's June 3, 1975, order correctly recites that El Paso's petition originally questioned whether Exxon, the other mineral fee owners, and Gulf, and Warren each had to obtain abandonment authority upon expiration of the 50-year fixed term lease. However, as noted at footnote 1, *supra*, El Paso later withdrew its question as to whether Gulf required abandonment authority for a percentage sale to Warren since, in fact, no sale between the corporate affiliates exists. Accordingly, Exxon does not propose to address itself to this question in this brief. However, even if such a sale did exist, no authority would be required for the reasons set forth in its March 3, 1975, Answer in these these proceedings.

initial briefs on June 20, 1975, with simultaneous reply briefs due June 25, 1975.

III

Argument

A. *A Commission Order Requiring Exxon To Deliver Production From Its Mineral Fee Estate To El Paso Would Violate Exxon's Fifth Amendment Rights.*

When the 50-year fixed term oil and gas lease expires on July 14, 1975, the right to dispose of production from the mineral estate vests in Exxon, as mineral fee owner, unencumbered by any contractual commitment to El Paso. Such lease grants no authority to Gulf, as lessee, to commit production [297] after the lease term expires. Accordingly, when El Paso contracted with Gulf to purchase production from Gulf's leasehold estate, it did so subject to Gulf's authority to sell such production as circumscribed by the lease. Just as Gulf's right to sell production ceases when the lease expires, so also does El Paso's right to purchase such production cease when the lease expires. Since Exxon itself has not delivered or agreed to deliver any production from its mineral fee estate to El Paso, Exxon has no duty to El Paso and El Paso has no right as to Exxon with respect to such production when the lease expires on July 14, 1975.

Nevertheless, El Paso, through the guise of suggesting that Exxon or Gulf may require abandonment authority upon lease expiration, seeks to acquire production from Exxon when it has absolutely no right to make such purchase. In the succeeding subsections

of this brief we demonstrate that El Paso's contrived abandonment theories are totally without merit. But before proceeding with such demonstration, a much more fundamental Constitutional issue which underlies El Paso's entire thesis must be recognized. Such issue, when properly understood, dictates that the abandonment order sought by El Paso must be denied.

The abandonment orders sought by El Paso would deprive Exxon of its property without due process of law in violation of the Fifth Amendment of the Constitution. Exxon has no obligation to sell or deliver production from its mineral fee estate to El Paso or to anyone else. It has never delivered, nor agreed to deliver, any of its production to El Paso.[5] Nevertheless, the relief requested by El Paso would force Exxon's delivery of its production to El Paso by precluding the delivery of such production to anyone else, including Exxon itself. Thus, it would deny Exxon its right to determine freely the disposition of its production. Clearly, a Commission order that would require Exxon to sell and deliver its production to El Paso involuntarily would deprive Exxon of its property in such gas in violation of its Fifth Amendment rights.

[298] The mineral fee owner's fundamental Constitutional right to determine initially whether it will

[5] Moreover, Exxon cannot be deemed to have agreed to such deliveries by reason of its agreement to lease its properties to Gulf. As found by the Court in Mobil Oil Corp. v. FPC, 463 F.2d 256, 262 (D.C. Cir. 1972), cert. denied 406 U.S. 976 (1972) the lessor, when it agrees to the lease of the mineral rights, has no knowledge whether gas will be discovered, much less whether gas, if discovered, will be sold or delivered in interstate commerce. Clearly, Exxon may not be found to have constructively acquiesed in a sale to El Paso by reason of the lease to Gulf.

embark upon a sale that will result in it and its property being subject to the Commission's jurisdiction forms the basis for the many judicial decisions which delineate and limit the Commission's authority under the Natural Gas Act. The right to agree to a sale was most succinctly stated by the Fifth Circuit in *Southern Louisiana Area Rate Cases,* 428 F.2d 407 (1970) *cert. denied* 400 U.S. 950 (1970) where the Court found (at p. 428):

> "The producers have a fifth amendment right not to be forced to sell or surrender their property without either due process or just compensation, but the Constitution gives them no right to raise prices irrespective of Commission approval in the absence of a deprivation of property."

Similarly, in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.,* 350 U.S. 332, 338-339 (1956) the Supreme Court held that under the Natural Gas Act relations between parties are established initially by the contracts to which they voluntarily agree, and the Commission is empowered only to supervise those contracts for the protection of the public interest. Moreover, the Commission cannot require a producer to sell its gas to a user that the Commission favors, *FPC* v. *Transcontinental Gas Pipe Line Corp.,* 365 U.S. 1, 17 (1961), nor can the Commission require a producer "to dedicate its gas to interstate commerce," *Public Service Commission of N.Y.* v. *FPC,* 463 F.2d 824, 829 (1972). Clearly, the Commission is without authority to require Exxon to deliver any production from its mineral fee estate to El Paso because, were it to do so, it would deprive Exxon of its property without due

process of law in violation of the Fifth Amendment to the Constitution.

Although Exxon is a jurisdictional natural gas company because it makes numerous other sales of natural gas in interstate commerce for resale, it is not so situated insofar as production from its mineral fee estate is concerned. Exxon has neither sold nor dedicated such gas to interstate commerce. However, if the relief requested by El Paso were granted, Exxon would be forced to become a jurisdictional company as to such production because such order would compel Exxon to perform involuntarily the threshold jurisdictional act of commencing deliveries in interstate commerce. Under such circumstances, the issuance of such an order to Exxon would be no different from the Commission issuing an order to a widget company that has just acquired some new natural [299] gas reserves directing it to sell its production from such reserves in interstate commerce. Congress simply has not vested the Commission with the power to take private property for a public use.

The fact the Commission order sought by El Paso would force Exxon to initiate a jurisdictional sale readily distinguishes this case from the traditional Constitutional decisions which uphold the imposition of economic regulation under the Commerce power despite the fact that such regulation may reduce the value of the regulated property, *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 59 (1944); *Nebbia* v. *New York,* 291 U.S. 502 (1934). In those cases, the parties themselves voluntarily agreed to the sale which subjected their property to regulation. No such agreement exists here. Thus,

the traditional Constitutional cases which approve economic regulation after a sale has been voluntarily made have no application here. Under these circumstances, El Paso's petitioned relief must be denied if Exxon's Fifth Amendment rights are not to be violated.

B. *The Mineral Fee Owners Are Not Required To Obtain Abandonment Authority.*

We turn now to the two specific questions raised by El Paso's petition which are summarized in the Commission's June 3, 1975, order. First, it is questioned whether Exxon and the other mineral fee owners require abandonment authority at the end of the lease term in order to dispose of their fee interests in the gas to others than El Paso. This question assumes implicitly a critical fact that simply does not exist. Before any question of a need for abandonment authority can arise, there must first have been a sale of gas by Exxon and the other mineral fee owners to be abandoned. Here, however, Exxon and the other mineral fee owners are expressly precluded by their lease with Gulf from making any sales of gas from their mineral estate during the 50-year fixed lease term. During such period, the exclusive right to sell production from the leased properties lies with Gulf. Therefore, prior to July 14, 1975, when the lease expires, Exxon and the other mineral fee owners have not sold, because they could not sell, any gas from the leased properties to El Paso. Notably, even El Paso does not allege that it has purchased any gas from Exxon and the other mineral interest owners. Consequently, there has been no sale or service by or between these parties

to which the Commission's abandonment jurisdiction may apply.

[300] The fact that Exxon and the other mineral fee owners, as royalty owners during the term of the 50-year lease, make no sales subject to the Commission's jurisdiction has been conclusively determined in *Mobil, supra*. There the D.C. Circuit held that (463 F.2d at 262):

> "As to leases of reserves from landowners to lessee-producers there is no knowledge when the lease is executed of the ultimate destination of any gas that might be discovered, no knowledge whether the gas, if discovered, will be sold either to an interstate pipeline or to any other customer that will move it across state lines. While the lease by the landowner provides for a royalty in the event of the discovery and sale of gas, typically he has no control over any incident of such sale either as to the quantity to be sold, the price to be paid, the identity of the purchaser or whether it shall be sold in interstate or intrastate commerce. To refer to the royalty owner as engaging in the sale is to depart from the common understanding of the words used, industry parlance, economic equivalent, or any other foundation hitherto considered a source for discerning Congressional intention." (footnote omitted)

Thus, Exxon and the other mineral fee owners have not made and could not make any sales of gas to which the Commission's abandonment jurisdiction can apply. And, this basic fact is not altered by reason of their

retention of a royalty in the event Gulf discovered and sold gas.

The holding of *Mobil* also demonstrates El Paso's misplaced reliance upon the commingling doctrine of *California* v. *Lo Vaca Gathering Co.*, 379 U.S. 366 (1965). El Paso suggests that its purchase of gas from Gulf has somehow tainted the volumes belonging to Exxon. However, before the *Lo Vaca* commingling doctrine can have any applicability, there must be a sale of gas by Exxon which is commingled with that belonging to Gulf. However, as recognized by *Mobil*, Exxon makes no sale of gas while the lease is in effect. Thus, there never has been a commingling of the volumes sold within the meaning of *Lo Vaca*. In contrast to El Paso's suggestion Exxon's mineral fee production is free of dedication to El Paso.

[301] The Commission itself has recognized in *El Paso Natural Gas Company* v. *Perry R. Bass*, 48 FPC 1269 (1972) that the delivery of gas by the lessee in interstate commerce does not impair the rights of the mineral owner to market its gas. In that case, El Paso had been purchasing the full wellstream in a particular well from the lessee, Shell Oil Company. When the lessor, Perry R. Bass, exercised his back-in working interest, El Paso questioned whether Bass required abandonment authority before he could sell his working interest gas to a pipeline company other than El Paso. The Commission held that no abandonment authority was required because El Paso's rights to purchase gas from the well were no greater than Shell's right to sell it.

Because of the extremely close factual relationship between the *Bass* opinion and the instant proceeding

it is appropriate to quote extensively from the Commission's unanimous holding in that case (48 FPC at 1276-1277):

> "The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell had no right to sell. We will not so alter the basic property rights of mineral owners through the fiction of Section 7(b) application. El Paso is charged with notice of the limitations on Shell's power to contract, for such limitations preceded the Shell-El Paso agreement by seven years and were express in the very instrument which marked Shell's inception of title, the 1956 farmout agreement. We note that the Shell-El Paso gas contract did not purport to cover any gas save that produced from 'the properties owned by Shell.' In law, Shell contemplated selling, and El Paso contemplated buying, Shell's gas. Neither party can be heard to say that the gas contract can function to impair the pre-existing title of Bass, who was not a party to the gas contract and who could not have prevented its execution. El Paso's rights to purchase gas from the James Ranch Well can rise no higher than Shell's rights to sell that gas, yet El Paso seeks that result by its claim that it is entitled to purchase Bass' gas until this Commission orders otherwise. Shell obtained its working interest by lease assignment from Bass. The Commission recognizes the legal requirement that [302] when an assignment of a lease occurs, the successor steps '* * * into the shoes of his predecessor [and] takes the properties * * * subject to any benefits and infirmities in-

herent therein.' *Graridge Corp., et al.,* Opinion No. 408, 30 FPC 1156 at 1162. Shell took the James Ranch lease subject to the infirmity that it could not sell Bass' gas, or bind Bass to a gas sales contract.

"At the time of execution of the Shell-El Paso contract, and at the time of our certification of the sale and the facilities there provided for, Bass was a royalty owner. Bass so remained until the happening of the contingency-payout to Shell of its well costs—which triggered Bass' right to convert its royalty interest to a working interest. As a royalty owner, Bass was not a 'seller' within the meaning of the Natural Gas Act and was not in any way subject to our jurisdiction. This is the express holding of *Mobil Oil Corp.* v. *F.P.C.*, 463 F.2d 256 (CADC-1971) cert. denied 406 U.S. 976 (1972) which overturned Opinion No. 562, 42 FPC 164. Section 7(b) operates only on 'natural gas companies', that is, as defined in Section 2(6) of the Act, those who transport or sell for resale in interstate commerce. It follows, therefore, that Section 7(b) does not apply to Bass, since Bass is neither a seller or transporter at this time.

"To hold otherwise would result in a very forceful exercise of Commission jurisdiction over a class of persons which the courts have decreed to be outside our jurisdiction. Were we to read Section 7(b) as applicable to royalty owners, we would exert rate control indirectly—by examination of Section 7(b) economic issues—when we have been told that we are without authority to exert direct rate control over royalty owners. *Mobil* v. *F.P.C.*,

supra. We will not so subvert the clear holding of a court." (footnote omitted)

Here, as in Bass, there is no basis in law or fact for the Commission to find that Exxon will become automatically bound by Gulf's certificates or contracts with El Paso upon the expiration of the 50-year fixed term lease. Like Bass, Exxon [303] was a royalty owner at the time of the execution and certification of the Gulf contracts with El Paso. As a royalty owner, Exxon, like Bass, neither owns nor operates any facilities in connection with the existing transaction between Gulf and El Paso which are subject to the Commission's jurisdiction. Moreover, Exxon, like Bass, did not grant Gulf any authority with respect to the disposition of production from its mineral fee estate, and did not itself agree to any sale of such production to El Paso. Thus, to hold that Exxon, as fee owner, somehow automatically would be bound involuntarily to deliver its production to El Paso would clearly subvert the holdings of *Mobil* and *Bass.*

C. *Gulf Is Not Required To Obtain Abandonment Authority.*

El Paso questions whether Gulf requires abandonment authority to "transfer" Gulf's interests to Exxon at the expiration of the lease term. At the outset, it must be recognized that there is no "transfer" of interests at the end of the lease term. On July 14, 1975, Gulf's leasehold estate simply expires. Thus, there simply is no "transfer" either in law or in fact for the Commission to approve.

Moreover, the Commission's opinion in *Bass* dictates that no abandonment authority is required by Gulf. There, Bass, in his lease to Shell, precluded Shell from disposing of his working interest in the gas production. As a result of this contractual limitation, the Commission found that Shell could not have sold Bass' gas to El Paso and El Paso could not have purchased it. Thus, the Commission held that its power to require abandonment authorization, of necessity, is limited to the gas which Shell had the right to sell.

Here, Gulf, like Shell, obtained its right to exploit certain oil and gas rights through a lease from Exxon. Such lease granted Gulf authority to dispose of production only during the 50-year fixed term. Gulf had no right either under the lease or otherwise to commit Exxon's fee interest in production to El Paso. Thus, Gulf's right to sell production under its contract with El Paso and El Paso's right to purchase production from Gulf ceases with the expiration of the lease. Since Gulf has no right to sell production beyond the 50-year fixed lease term, it, like Shell, does not require abandonment authorization when the lease expires. And, in any event, it is apparent from El Paso's petition, and stated in Gulf's answer, that Gulf will continue to sell residue gas to El Paso pursuant to their existing surplus residue gas sales agreements.

[304]

IV

Conclusion

Wherefore, Exxon requests that the Commission find that there has been no dedication of production from its mineral fee estate and that the Commission

declare that no abandonment authority is required at the expiration of the 50-year fixed term oil and gas lease.

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this 20th day of June, 1975.

[305]

(Certificate of Service Omitted in Printing)

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[306]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO, INC.

(RECEIVED JUNE 20, 1975)

Initial Brief of Gulf Oil Corporation

Docket No. CP75-209 involves a Petition by El Paso Natural Gas Company (El Paso) for a declaratory order resolving three questions:

> 1. Whether Gulf Oil Corporation (Gulf) and other lessees under fixed term leases which expire July 14, 1975 "who have been selling gas produced from said lease on a percentage type basis to Warren Petroleum Corporation for resale in interstate commerce, [must] obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act?"
>
> 2. Whether the owners of the reversionary mineral interests, Exxon, et al., under the fixed term leases may "divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce?"

> 3. Whether Warren Petroleum Corporation[1] may, without prior Commission authorization, reduce its sales of residue gas to El Paso to the extent such reduction is the result of the termination of the fixed term leases?

The Petition of Texaco Inc., raises substantially the same issues with regard to another fixed term lease owned by Gulf in Ector [307] County which expires August 7, 1975, and under which Texaco is a reversionary mineral owner. The gas is currently being sold by Gulf to Phillips Petroleum Company (Phillips).

I.

GULF'S POSITION

It is Gulf's position that it is not required to secure any authorization from the Commission to discontinue deliveries of gas to El Paso or Phillips upon expiration of the term leases.

II.

STATEMENT OF FACTS

All parties are in agreement that the facts in both proceedings are without dispute. The facts in El Paso, Docket CP75-209, are as follows:

On January 26, 1951, El Paso entered into a contract with Gulf to purchase "surplus residue gas

[1] As El Paso has since conceded, this question actually relates to Gulf Oil Corporation, since Warren Petroleum Corporation has been liquidated and its Certificates, including the one involved, transferred to Gulf as a successor in interest. The operations of the former Warren Petroleum Corporation are operated as a Division of Gulf under the name "Warren Petroleum Company, a Division of Gulf Oil Corporation."

available for sale" from casinghead gas processed in Gulf's Waddell Plant in Crane County, Texas. The Commission, by Order dated May 28, 1956, issued a Certificate of public convenience and necessity to Gulf in Docket No. G-7156. The Gulf-El Paso contract was amended from time to time to increase the volume of surplus residue gas covered by the sale. As a result, the Commission issued orders from time to time, including one dated August 1, 1956, in Docket No. G-57156, and one dated February 24, 1958, in Docket No. G-13445, amending the Certificate to include these increased volumes. Part of the residue gas sold by Gulf to El Paso after processing in the Waddell Plant was produced from two oil and gas leases which provided that the leases should terminate after a fixed period of time. Exxon, Southland and others are the owners of the reversionary mineral interests under said leases. Litigation developed between Gulf and the reversionary mineral owners with regard to the date on which the fixed term of the leases expired. This litigation was consummated in the decision of the Supreme Court of Texas in *Gulf Oil Corporation, et al.* v. *Southland Royalty Company, et al.*, 496 SW(2d) 547 (1973) which held that the term leases will expire on July 14, 1975, and that on that date the mineral rights, including gas, under said leases, will revert as a matter of law to the reversionary mineral owners, and that thereafter Gulf would have no right, title or interest therein.

In Texaco, Inc., Docket No. CI75-594, the facts are as follows:

[308] Texaco is the owner of one-fourth of the reversionary mineral interests under a term lease to

Gulf, a copy of which is attached as Exhibit "A" to Texaco's Petition for Issuance of a Declaratory Order. The term of this lease expires August 7, 1975, after which date one-fourth of the mineral rights, including gas, will revert as a matter of Law to Texaco.[2]

Gulf is currently selling casinghead gas produced from this fixed term lease to Phillips pursuant to the terms of a percentage type Casinghead Gas Contract dated November 9, 1971, a copy of which, marked Exhibit "A" is attached to Gulf's Petition to Intervene in the Texaco proceeding. This contract is for a term, which as to Texaco's mineral interest, will expire with the expiration of the term lease covering said interest. Gulf understands that Phillips processes the gas delivered to it in its Goldsmith Plant in Ector County, Texas, and sells the surplus residue gas to El Paso pursuant to various FPC Rate Schedules. Texaco is not a party to Gulf's Casinghead Gas Contract with Phillips, and has never sold any gas to Phillips produced from the lands covered by the fixed term lease.

III.

El Paso's first question as to whether Gulf should be required to secure abandonment authority before ceasing deliveries of the gas produced from the term leases to Warren Petroleum Corporation has been disposed of by agreement. In Paragraph IV of its Answer to Gulf's Petition to Intervene, and in Para-

[2] The owners of most but not all of the balance of the mineral interests have extended the lease by agreement. The gas attributable to these interests will continue to be delivered by Gulf to Phillips in accordance with Gulf's Casinghead Gas Contract.

graph II of its Motion for a Briefing Schedule, El Paso concedes that by virtue of the merger of Warren Petroleum Corporation into Gulf, there are no sales of gas between Gulf and Warren for which abandonment authority could be required. The details of this merger and the Commission's Order approving Gulf's succession to Warren Petroleum Corporation's Rate Schedules are set forth in Gulf's Petition to Intervene in the El Paso proceeding in Paragraph IV, and are incorporated herein.

IV.

El Paso's second question as to whether the reversionary mineral interest owners are required to secure Commission [309] authorization prior to disposition of their gas after termination of the leases is a matter for the reversionary mineral owners, although much of the discussion which follows is equally applicable to that question.

V.

The remaining question raised by El Paso is whether Gulf [3] should be required to secure Commission authorization before reducing its sales of surplus residue gas from the Waddell Plant to El Paso following termination of the fixed term leases on July 14, 1975. A similar, although not identical question, involves Gulf's delivery of gas to Phillips attributable to Texaco's reversionary mineral interest after ex-

[3] El Paso couched its question in terms of Warren Petroleum Corporation but since Warren has been merged with Gulf, the question is actually directed at Gulf.

piration of the fixed term of that lease on August 7, 1975.

It is Gulf's position that in neither case did it purport to dedicate the gas to El Paso which it will not own after expiration of the leases, and that had it attempted to do so, any such dedication would have been ineffective as a matter of law. Gulf's contract to sell residue gas to El Paso from its Waddell Plant [4] covers precisely what the language implies "surplus residue gas available for sale." This gas results from processing gas produced from various leases owned by Gulf or purchased from other producers. Upon expiration of the fixed term leases, the gas produced therefrom will no longer contribute to the surplus residue gas Gulf could sell to El Paso. As a matter of law, this gas will belong to the reversionary mineral owners and Gulf will have no control over it or their disposition thereof. The same is true with regard to Gulf's sale of gas produced from the term lease covering the Texaco mineral interest. The Casinghead Gas Contract with Phillips terminates by its own terms as to the Texaco interest with the termination of the lease covering such interest. Gulf attempted no dedication of gas beyond the interests it owned and no authority is required from the Commission to limit its deliveries to El Paso and Phillips to the interests it owned when those commitments were made.

Furthermore, even if Gulf had attempted to commit the gas that will be the property of reversionary

[4] Warren Petroleum Company, a Division of Gulf Oil Corporation's Rate Schedule No. 43.

mineral owners beyond the term of its ownership, such attempt would have been ineffective to bind it to continue a delivery of gas to which it had no right.

[310] *El Paso* v. *Bass,* Opinion No. 638, 48 FPC 1269 (1972) is dispositive of this question. In that case Bass farmed out leased acreage to Shell, reserving the right to one-half of the working interest after the well had paid out. Shell drilled a well and contracted to sell the gas to El Paso. The well paid out. Bass claimed his one-half of the working interest. El Paso filed a Petition for a Declaratory Order as it did in this proceeding, to require Bass to secure Commission approval before proceeding with his contemplated sale of the gas to another purchaser. The Commission held that no Commission action was required. The Commission's observations are startlingly applicable to this proceeding. The Commission stated:

> "*The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell had no right to sell.* We will not so alter the basic property rights of mineral owners through the fiction of Section 7(b) application. El Paso is charged with notice of the limitations on Shell's power to contract, for such limitations preceded the Shell-El Paso agreement by seven years and were express in the very instrument which marked Shell's inception of title, the 1956 farmout agreement. We note that the Shell-El Paso gas contract did not purport to cover any gas save that produced from 'the properties owned by Shell.' *In law, Shell contemplated selling, and*

> *El Paso contemplated buying, Shell's gas.*" (p. 9, Op. 638)[5]

El Paso's position here is substantially the same, that it somehow acquired the right to purchase that which Gulf had no right to sell. The leases under which Gulf acquired its fixed term rights were executed many years before any contract was made with El Paso. These leases were of record and in any event Gulf never purported to sell to El Paso gas to which it had no right. The Commission further stated:

> "*Neither party can be heard to say that the gas contract can function to impair the pre-existing title of Bass,* who was not a party to the gas contract and who could not have prevented its execution. *El Paso's rights to purchase gas from the James Ranch Well can rise no higher than Shell's rights to sell that gas, yet El Paso seeks that result by its claim that it is entitled to purchase Bass' gas until this Commission orders otherwise.* Shell obtained its working interest by lease assignment from Bass. The Commission recognizes the legal requirement that when an [311] assignment of a lease occurs, the successor steps '. . . into the shoes of his predecessor [and] takes the properties . . . subject to any benefits and infirmities inherent therein.' *Graridge Corp., et al.,* Opinion No. 408, 30 FPC 1156 at 1162. Shell took the James Ranch lease subject to the infirmity that it could not sell Bass' gas, or bind Bass to a gas sales contract." (p. 9, Op. 638)

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[5] All emphasis in the brief is added.

Language could hardly be more applicable to this proceeding. Gulf, like Shell, never owned the gas which El Paso would subject to Commission authority. As the Commission pointed out in *Bass,* neither party can be heard to say that Gulf's contracts with El Paso and Phillips could impair the pre-existing reversionary title of the mineral owners, even if they had purported to do so, which they did not.

The above quotation, beginning with the words "El Paso's right to purchase . . ." was quoted by the Commission with approval in *Blair-Vreeland,* Docket CI74-331, in Opinion No. 724A, page 4, as recently as May 14, 1975. In that case Blair-Vreeland drilled wells on a farmout from Exxon which covered a lease which had *previously* been dedicated by contract to Tennessee. The Commission held that Blair-Vreeland was a successor in interest to Exxon, and as such bound by its contract dedication. The Commission distinguished the *Bass* case in part with the above quotation. In its discussion, the Commission specifically agreed with the following statement, taken from Blair-Vreeland's application:

> "' . . . *In Bass the question was not what Bass could bestow on Shell, but what Bass in fact did bestow* [*on Shell*] *by way of a farmout agreement.* Bass retained a 1/8th override convertible into a 1/2 working interest after payout of the cost of drilling the well to Shell. Shell attempted to dedicate 100% of the gas [to El Paso] and the Commission held that the gas to which Bass was entitled (1/2) was not dedicated because it was never owned by Shell. (Application, pp. 10-11)' " (p. 4, Op. 724-A)

The only difference between that analysis of the *Bass* case and this case is that while Bass could have bestowed the right of full disposition on Shell, it did not; while in these proceedings Gulf never owned the reversionary interests and could not have committed them to El Paso. The Commission continued its discussion in the *Bass* case:

> "*At the time of execution of the Sell-El Paso contract,* and at the time of our certification of the sale and the facilities there provided for, *Bass was a royalty owner. Bass so remained until the happening of the contingency-payout* [312] to Shell of its well costs—*which triggered Bass's right to convert its royalty interest to a working interest.* As a royalty owner, Bass was not a 'seller' within the meaning of the Natural Gas Act and was not in any way subject to our jurisdiction. This is the express holding of *Mobil* v. *F.P.C.,* —— F.2d —— (CADC 1971) cert denied —— U.S. —— (1972), which overturned Opinion 562, 42 FPC 164. Section 7(b) operates only on 'natural gas companies', that is, as defined in Section 2(6) of the Act, those who transport or sell for resale in interstate commerce. *It follows, therefore, that Section 7(b) does not apply to Bass, since Bass is neither a seller or transporter at this time.*" (p.10, Op. 638)

As in *Bass,* during the terms of the leases the reversionary mineral owners were royalty owners, and as such were not "sellers" within the meaning of the Natural Gas Act to which Section 7(b) could apply. The Commission further continued its discussion in *Bass:*

"But did Bass become jurisdictional at the point in time when it converted its royalty interest to a working interest? This question can be answered in the affirmative only if we can conclude that Bass then became a seller automatically bound by the Shell-El Paso contract and our certificates. We have no basis in law to reach such a conclusion, particularly so since Bass had precluded such a result in its 1956 farmout with Shell. It is not our function to re-make contracts for the parties. *And it is patently clear that one who proposes to become a seller in interstate commerce is entitled to accept or reject, our certification without compulsion to render service."* (p. 10, Op. 638)

As in *Bass* there is no basis in law upon which to conclude that the mineral owners will become sellers to El Paso and Phillips upon termination of the leases. This Commission cannot remake the reversionary provisions of the term leases to compel the mineral owners to dedicate their interests to El Paso contrary to their desires.

In its Petition for a Declaratory Order, El Paso in Footnote 14 on page 7 discusses the *Bass* case, and makes a concession which in our judgment virtually disposes of these proceedings. El Paso there stated:

> "By its order issued December 8, 1972, the Commission decided that Bass' prior royalty interest did not make him a seller of natural gas in interstate commerce for resale nor did his conversion from a royalty interest to a [313] working interest; therefore, the producer was free to sell his share of the gas to Natural."

Transposing the names of the parties, El Paso apparently concedes that neither the reversionary mineral owners' prior royalty interests nor the conversion of such royalty interests to working interests made them "seller[s] of natural gas in interstate commerce for resale * * *." Even more decisive is the concession that therefore the reversionary mineral interest owners will be free to sell their share of the gas elsewhere. The only distinctions El Paso made of the *Bass* case are stated in the last paragraph of the Footnote, which reads:

> "The Commission in Perry R. Bass did not address itself to the issues raised here. In particular, the Commission did not address itself to whether a party in the position of Gulf (i.e., a prior working interest owner) must obtain abandonment authorization before the lessor may 'back in' to the working interest. Moreover, the factual situation is so different in this case, when the entire output of the wells is proposed to be diverted to intrastate commerce, that the Perry R. Bass decision should not be controlling on any issue raised herein by El Paso."

The argument that *Bass* is distinguishable because it did not pass on the question as to whether Shell was required to secure abandonment approval from the Commission before Bass could dispose of its share of the gas to Natural is clearly without merit. While the Commission made no specific mention of Shell, if Bass was authorized to dispose of the gas to another purchaser without abandonment approval, no require-

ment could be imposed on Shell to prevent the very disposition of the gas the Commission had just approved. Obviously if Bass sold its gas to Natural with the Commission's blessing, Shell couldn't deliver the same gas to El Paso. It would be an anomaly for the Commission to hold that the reversionary mineral interest owners will be entitled, like Bass, to dispose of their gas to another purchaser, but that Gulf will be required to deliver that very gas to El Paso and Phillips until it secures some further approval from the Commission. Any such reading of the *Bass* case would be ridiculous.

The other distinction drawn by El Paso was that the factual situation was different because the entire output of the wells in the present proceedings is proposed to be "diverted to intrastate commerce" borders on the absurd. Surely the validity of *Bass* is not dependent upon whether a part or the entire output of wells is involved. There is nothing in *Bass* to indicate that Bass' right of disposition of his gas would have been any the less if he elected to sell it to a purchaser for intrastate use rather than to another interstate purchaser. Commission [314] decisions cannot rest on any such irrelevant distinctions. The *Bass* case is in point and dispositive of these proceedings.

Conclusion

Wherefore, Gulf submits that no further action by the Commission by way of abandonment or otherwise is required of Gulf with regard to the disposition of the gas attributable to the reversionary mineral interests after expiration of the limited term leases involved in these proceedings.

Respectfully submitted,

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Dated: June 18, 1975

(Verification Omitted in Printing)

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[315]

(Certificate of Service Omitted in Printing)

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO, INC.

(RECEIVED JUNE 23, 1975)

Initial Brief of Mineral Interest Owners

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[318] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO, INC.

Initial Brief of Mineral Interest Owners [1]

I.

STATEMENT OF THE CASE

On January 20, 1975, El Paso Natural Gas Company (El Paso) filed a petition for declaratory order in Docket CP75-209 pursuant to Section 1.7(c) of the Rules of Practice and Procedure.[2] The "controversy or uncertainty"[3] which is [319] the subject of El

[1] The Mineral Interest Owners on whose behalf this petition to intervene and answer is filed are listed on Exhibit A hereto.

[2] Section 1.7(c) of the Commission's Rules of Practice and Procedure states:

> (c) *For declaratory orders.* Petitions for the issuance, in the discretion of the Commission, of a declaratory order to terminate a controversy or remove uncertainty shall state clearly and concisely the controversy or uncertainty which is the subject of the petition, shall cite the statutory provision or other authority involved, shall include a complete statement of the facts and grounds prompting the petition, together with a full disclosure of petitioner's interest, and shall conform to the requirements of §§ 1.15 and 1.16.

[3] Contrary to the requirement of Section 1.7(c), El Paso does not state "clearly and concisely the controversy or uncertainty" which is the subject of its petition. Instead, El Paso requests the Commission to resolve three complex questions which are framed in a manner clearly prejudicial to Mineral Interest Owners and

Paso's petition arises from the termination on July 14, 1975, of the 50-year fixed-term oil and gas lease held by Gulf Oil Corporation (Gulf) on the approximately 46,000 acres in Crane County, Texas, referred to in El Paso's petition. The gas attributable to Gulf's fixed-term leasehold estate is sold to El Paso at the tailgate of the Waddell Gasoline Plant which is operated by Warren Petroleum Company (Warren), a division of Gulf Oil Corporation.[4] Under established principles of Texas oil and gas law, Gulf will be the sole owner and seller of this gas production until its leasehold estate terminates on July 14, 1975. Upon termination of Gulf's leasehold estate on July 14, 1975, Mineral Interest Owners will hold fee simple title to their pro rata share of the mineral estate underlying the subject acreage.[5] *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547, 552 (Tex. Sup. Ct. 1973). In other words, upon termination of the lease on July 14, 1975, Gulf will have no right, title or interest in any gas produced from and attributable to the fee simple mineral estate of Mineral Interest Owners and will have sold to El Paso all of the gas to which Gulf was entitled under the lease. Thereafter, Gulf will continue to sell to [320] El Paso all of the

contrary to the legal relationship between the parties. At no point does El Paso take a position on how these questions should be resolved by the Commission. However, its "suggestions" and the manner in which it has framed the questions to be decided leave no doubt as to the result El Paso seeks.

[4] According to El Paso, such sales represent approximately 42% of the gas being sold to El Paso at this point of delivery (Pet. 5).

[5] The respective percentage owned by each Mineral Interest Owner in the mineral estate covered by this lease is also shown on Exhibit A hereto.

gas it could have dedicated and did dedicate under its contracts with El Paso and all of the gas covered by the certificates which the Commission has issued with respect to such sales to El Paso.

Mineral Interest Owners have agreed to sell to Intratex Gas Company[6] (Intratex) the gas attributable to the fee simple mineral estate they will hold on July 14, 1975, following the termination of Gulf's leasehold estate. According to El Paso, this sale to Intratex will result in a "diversion" of sales of surplus residue gas from interstate commerce to intrastate commerce.[7] El Paso "questions" whether such diversion should take place without prior clarification of three questions by the Commission. When these three questions are stripped of the verbal camouflage superimposed by El Paso, the dispositive question boils down to whether Mineral Interest Owners must obtain Section 7(b) abandonment authorization before initiating sales to the purchaser of their choice (Intratex).

On April 8, 1975, Texaco Inc. (Texaco) filed in Docket CI75-594 a petition for declaratory order with respect to the termination on August 7, 1975, of a 50-year fixed-term lease held by Gulf on property in

[6] Intratex, an intrastate buyer of gas, is a wholly owned subsidiary of Houston Natural Gas Corporation, a distributor of gas in the City of Houston, Texas, and environs.

[7] As detailed herein, the "diversion" alleged by El Paso is illusory because Mineral Interest Owners are not now making, nor have they made in the past, any sales of gas attributable to their mineral estate. Of course, in order to have a "diversion" of gas sales, there must be some existing sale from which the gas is diverted.

Ector County, Texas. According to Texaco's petition, the gas attributable to this fixed-term leasehold estate of Gulf is sold under a percentage-type of casinghead gas contract to Phillips Petroleum Company (Phillips) as operator of the Goldsmith Gasoline Plant in Ector County, Texas. The residue gas available at the tailgate of this plant is then sold to El Paso.

[321] By order[8] issued June 3, 1975, the Commission consolidated the proceedings in Docket CP75-209 with those in Docket CI75-594. This brief is directed to the issue raised by El Paso's petition in Docket CP75-209.[9]

II.

ARGUMENT

A. *Factual Background*

As noted above, Mineral Interest Owners are the owners of the reversionary mineral estate underlying approximately 43,000 acres in Crane County, Texas. This mineral estate is presently subject to a 50-year fixed-term oil and gas lease[10] [322] dated July 14,

[8] In footnote 1 of this order, the Commission stated that the interest of Mineral Interest Owners "represents approximately 81% of the term lease gas." Of course, Mineral Interest Owners own no interest in the term lease gas. *See* footnote 20, *supra*.

[9] If the facts in Texaco's petition "are identical in all material respects to the facts set forth in El Paso's petition", then the arguments set forth herein would also be applicable to any issues raised by the petition filed by Texaco in Docket CI75-594.

[10] Such term oil and gas leases now are extremely rare, in fact almost unique. As early as 1928, it was recognized that fixed-term leases had "long been in disuse" and were "of no practical im-

1925, as amended March 16, 1926,[11] between W. N. Waddell, et al (predecessors of Mineral Interest Owners), as Lessors, and Gulf Production Company (predecessor of Gulf), as Lessee.[12]

Mineral Interest Owners' only present interest in the casinghead gas being produced by Gulf from the lease is a royalty of 1/8th of 4¢ per Mcf for all casinghead gas produced and sold from said lease. Under this royalty provision, Mineral Interest Owners have no right to take gas in kind or to receive a royalty based

portance" in Texas. Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas*, 7 Tex.L. Rev. 1, 15 (1928). *See also* 3 Williams, Oil & Gas Law § 601.1; Brown, Law of Oil and Gas Leases § 5.01. Virtually all modern oil and gas leases provide for the leasehold estate to remain in effect as long as either oil or gas is produced in paying quantities. 2 Kuntz, Law of Oil & Gas § 26.1 at 244; 1A Summers, Law of Oil & Gas § 153 at 381. Indeed, the fact that, except for Texaco, no other mineral interest owners have sought to intervene or have filed similar petitions for declaratory orders indicates that there are few, if any, other such term leases.

[11] Copies of this 50-year fixed-term oil and gas lease and amendment are attached to El Paso's petition as Exhibits A and B, respectively. As noted in El Paso's petition (p. 3, fn. 1), this lease and amendment were recorded in the Deed Records of Crane County, Texas, thus putting parties such as El Paso on constructive notice of the terms and conditions of the lease, including the fact that it terminates on July 14, 1975. Tex. Rev. Civ. Stat. Ann. § 6646.

[12] El Paso's petition (p. 1) refers to six other lessees in addition to Gulf. However, it should be noted that each of these six other lessees obtained its interest as a result of an assignment of a small portion of Gulf's 50-year fixed-term lease and, therefore, took such leasehold interest subject to the same terms and conditions as Gulf. For simplicity, all current lessees will be referred to herein as "Gulf."

on the price received by the Lessee for the gas.[13] The lease specifically provides "that this lease shall not remain in force longer than 50 years from" the date thereof.[14] Any doubt as to the date [323] of termination was removed in *Gulf Oil Corp.* v. *Southland Royalty Co., supra,*[15] where the Supreme Court of Texas hedl:

> The duration of the estate granted is traditionally determined by the habendum clause. 2 Summers, The Law of Oil and Gas, Perm.Ed. § 303.1, p. 319. This need not be the case, for the instrument may provide elsewhere for the enlargement of the term stated in the habendum. *See Standard Oil & Gas Co.* v. *Christian,* 83 S.W.3d 408 (Tex. Civ. App. 1935, writ ref'd); *Humphrys* v. *Skelly Oil Co.,* 83 F2d 989 (5th Cir. 1936). It is always a question of resolving the intention of the parties from the entire instrument. In looking to the place in this lease where we would expect to find the term stated, we find this very certain language "Provided, that this lease shall not remain in force longer than fifty (50) years from this . . ." With a plain and certain answer to the question of when the lease terminates, we cannot change that answer with words elsewhere in the lease not certainly directed to the same question. *Moore* v. *Smith,* 443 S.W.2d 552 (Tex. 1969); *Cartwright* v. *Trueblood,* 90 Tex. 535, 39 S.W. 930 (1897).

[13] Section 2 of the lease.

[14] Section 1, paragraph 2 of the lease.

[15] A copy of this decision is attached to El Paso's petition as Exhibit D.

The judgments below, declaring and adjudging the lease to terminate finally on July 14, 1975, are affirmed.

On January 26, 1951, Gulf executed a Residue Gas Purchase Agreement[16] (1951 Agreement) with El Paso under which Gulf agreed to sell and El Paso to purchase Gulf's "surplus residue gas" at the tailgate of Gulf's Waddell Gasoline Plant in Crane County, Texas. As defined in Article I of the 1951 Agreement, the volumes of "surplus residue gas" to be sold were limited to volumes remaining after Gulf processed the [324] Gas in the Waddell plant, met all of its obligations under the terms of its oil and gas leases in the area, satisfied its fuel requirements for its drilling and plant operations, and met its obligations under an existing gas sales agreement.[17] Following the *Phillips* decision,[18] Gulf received a certificate by order issued May 26, 1956, in Docket G-7156 authorizing this sale of "surplus residue gas" to El Paso.

On March 1, 1972, El Paso and Warren[19] entered into an additional Residue Gas Purchase Agreement (1972 Agreement)[20] covering additional volumes of

[16] This contract is on file with the Commission as part of Warren's FPC Gas Rate Schedule No. 43.

[17] 1951 Agreement, Art. I(d).

[18] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[19] Following its acquisition of Warren Petroleum Corporation in 1957, Gulf conveyed its interest in the Waddell Plant, the gathering system associated therewith, and the 1951 Agreement to Warren. On December 31, 1971, Warren was merged into Gulf and now operates as a division of Gulf.

[20] This contract is on file with the Commission as a part of Warren's FPC Gas Rate Schedule No. 66.

surplus residue gas attributable to newly executed contracts between producers and Warren and renewals or extensions of existing contracts between producers and Warren. By order issued July 22, 1974, in Docket CI72-760, the Commission authorized the sale of additional surplus residue gas under the 1972 Agreement. Neither the 1951 Agreement nor the 1972 Agreement purports to cover any gas attributable to the mineral estate of Mineral Interest Owners.[21]

As stated in its petition, El Paso takes delivery of the surplus residue gas which Warren has available at the tailgate of the Waddell Gasoline Plant and transports such gas through its jurisdictional facilities for ultimate consumption in [325] interstate commerce. According to El Paso's petition, approximately 25,000 Mcf per day of the 60,000 Mcf per day of surplus residue gas which El Paso purchases at the tailgate of the Waddell Plant reflects gas production attributable to Gulf's leasehold estate under the 50-year fixed-term lease.[22]

Upon termination of Gulf's leasehold estate on July 14, 1975, Mineral Interest Owners propose to sell to

[21] Mineral Interest Owners were not parties to these contracts or to any contracts under which Gulf sold its gas and could not have prevented the execution of such contracts.

[22] In its petition, El Paso states (p. 5) that Southland, the Warren Wright Estate, and the Penn heirs (which comprise the Mineral Interest Owners) "collectively own 80% of the 50-year fixed-term lease gas and are considering its sale." As previously noted, these Mineral Interest Owners do not own any of the 50-year fixed-term lease gas, since all such gas is attributable to Gulf's leasehold interest and is owned by Gulf. What Southland, the Warren Wright Estate, and the Penn heirs do own collectively is approximately 80% of the gas production which will be attributable to the fee simple mineral interests of all of the Mineral Interest Owners upon expiration of Gulf's 50-year fixed-term lease.

Intratex the gas attributable to the fee simple mineral estate they will own.

B. *Mineral Interest Owners Are Not Required To Obtain Abandonment Authorization Under Section 7(b) Before Initiating Sales of Gas to Intratex*

There is no merit to El Paso's suggestion that Mineral Interest Owners must secure abandonment authorization under Section 7(b) of the Natural Gas Act before exercising their rights as mineral estate owners to make sales in the intrastate market of gas attributable to the mineral estate they will hold on July 14, 1975. This suggestion rests wholly on the invalid assumption that volumes of gas attributable to the mineral estate of Mineral Interest Owners have somehow been dedicated to the interstate market. However, as detailed below, no such dedication has occurred, and therefore, Section 7(b) clearly does not apply to Mineral Interest Owners under the undisputed facts before the Commission in this case.

[326] Preliminarily, Mineral Interest Owners agree with El Paso's statement (p. 7) that, once dedicated to interstate commerce, gas reserves may not be removed from interstate commerce without abandonment authorization.[23] But this legal conclusion begs the question of whether gas attributable to the mineral estate of Mineral Interest Owners has been dedicated to interstate commerce. Likewise, El Paso's reliance on *California* v. *LoVaca Gathering Co.*, 379 U.S. 366 (1965), is misplaced because there has been

[23] *Sunray Mid-Continent Oil Co.*, 364 U.S. 137 (1960).

no physical movement of any gas attributable to the mineral estate of Mineral Interest Owners. Indeed, since the right of such Mineral Interest Owners to market any gas attributable to their mineral estate will not even come into being until July 14, 1975, no gas attribuable to such mineral estate could have been previously delivered by Gulf and no dedication of such gas could have occurred.

The Natural Gas Act comprehends that before jurisdiction attaches there must be a voluntary dedication of service to the interstate market. Only when a producer *chooses to sell* gas in interstate commerce and *commences deliveries* does he make himself a natural gas company.[24] In short, the Commission has no authority under the Natural Gas Act to compel a producer to sell his gas in interstate commerce. And although the Commission has the authority under Section 7(e) of the Act to condition certificates which it issues, a producer may reject a conditioned certificate offered by the Commission.[25]

[327] It is likewise clear that gas may only be dedicated to the interstate market to the extent that a seller has the authority to dispose of the gas involved. For example, if under a particular lease the lessee has the right to explore and develop only a specified portion of the mineral estate, i.e., only to a particular

[24] *Argo Oil Corp.*, 15 F.P.C. 601, 618 (1955); *Pioneer Gathering System*, 23 F.P.C. 260, 263 (1960). Section 7(e) of the Act requires that before issuing a certificate the Commission must find the applicant "willing" to perform the service.

[25] *Atlantic Refining Co.* v. *Public Service Comm'n*, 360 U.S. 378, 387-88 (1959).

depth, the lessee can only dedicate to interstate commerce those volumes of gas which he has the right to produce and develop. By making sales of gas produced from his lease under a certificate issued by the Commission, such a lessee does not and cannot dedicate to interstate commerce gas not covered by the lease.

Similarly, the fact that Mineral Owners retain a royalty interest under Gulf's term lease does not make them "sellers" of gas in interstate commerce within the meaning of the Natural Gas Act,[26] and in no way dedicates gas attributable to their mineral estate to the interstate market. On this point, the decision in *Mobil Oil Corp* v. *F.P.C.*,[27] is dispositive. In that case, the Commission had held that the royalty provision in an oil and gas lease created an economic interest in interstate sales of gas and constituted a sale of gas for resale in interstate commerce so that land owners holding such royalty interests were natural gas companies subject to the Natural Gas Act. [328] In reversing the Commission's decision,[28] the Court of Appeals found that,

[26] As noted by Judge Brown in *J.M. Huber* v. *Denman*, 367 F.2d 104 (5th Cir. 1966):

> . . . there can be no "sale" of gas by royalty owners since they have no gas to sell. And this seems to be true as a matter of oil and gas law whether based on the ownership-in-place concept followed by Texas and others or in nonownership theories of other jurisdictions. For all agree that as the gas leaves in the well-mouth the entire ownership of the gas is in the lessee, none being reserved in the lessor. (367 F.2d at 113-4).

[27] 463 F.2d 256 (D.C. Cir. 1971) *crt. denied*, 406 U.S. 976 (1972). Any discussion of this controlling case is conspicuously absent from El Paso's petition.

[28] Opinion No. 562, 42 F.P.C. 164.

under "an ordinary lease by the landowner to the producer, there is neither a 'customary' sale in interstate commerce nor its equivalent in economic effect."[29] Noting that execution of a conventional lease precedes the sale of natural gas, the court further concluded that royalty interests are "too far removed from the interstate sale" and, therefore, outside the Commission's control.[30]

The holding in *Mobil* is particularly applicable in this case because the royalty provision in Gulf's fixed-term lease is not related to the market price at which the gas is sold but to the 1/8th of 4¢ per Mcf for all casinghead gas. Therefore, the royalty interests of Mineral Interest Owners do not include a percentage interest in the gas sold by the lessee. Thus, these royalty interests are even further removed from any possible jurisdictional sale of gas than those involved in *Mobil* and clearly do not subject gas attributable to the mineral estate of Mineral Interest Owners to the Commission's jurisdiction.

As applied to the instant case, the foregoing basic principles require the conclusion that any gas that may be produced from the mineral estate following the expiration of Gulf's 50-year fixed-term lease has not been and could not have been dedicated to interestate commerce by Gulf. Under its lease, Gulf possessed only a 50-year leasehold right and had no legal authority to provide for disposition of any gas produced therefrom beyond the termination date of the lease.[31] [329]

[29] 463 F.2d at 262.

[30] *Id.* at 262-263.

[31] In *Mobil*, the court noted that a lease gives a lessee "*all pos-*

Consequently, Gulf could not dedicate to the interstate market volumes attributable to the mineral estate of Mineral Interest Owners, which volumes will be produced only after Gulf's leasehold estate terminates."[32]

Moreover, El Paso's suggestion that Mineral Interest Owners must obtain Section 7(b) abandonment authorization before initiating sales to Intratex is clearly contrary to the principles enunciated by the Commission in rejecting similar contentions in *El Paso Natural Gas Co.* v. *Perry R. Bass.*[33] In that case, Bass had entered into a farmout agreement with Shell Oil Company under which Bass retained an overriding royalty and an option to convert such royalty interest into a one-half working interest within 30 days after payout. Under the contract, Shell had no authority to sell any gas attributable to Bass' working interest. Beginning in 1961, Shell sold gas from the property to El Paso under a certificate issued by the Commission. After payout occurred in 1972, Bass elected to convert his overriding royalty interest to a working interest and contracted to sell the gas to another pipeline. El Paso filed a complaint and petition for declaratory order with the Commission asserting that Bass was required to obtain "abandonment authorization pursuant to

sessory interests in gas produced during the life of the lease" (463 F.2d at 260) (emphasis supplied).

[32] It does not appear that Gulf has ever attempted to dedicate to El Paso any of the volumes of gas attributable to the mineral estate of Mineral Interest Owners. In any event, even if Gulf had attempted to sell gas attributable to the mineral estate of Mineral Interest Owners, El Paso was charged with notice of the limitations on Gulf's power to contract. *See* footnote —, *supra.*

[33] Opinion No. 638, 48 F.P.C. 1269 (1927).

Section 7(b) of the Natural Gas Act, . . . prior to the diversion of natural gas by Bass from its present movement in interstate commerce to El Paso."[34]

[330] The Commission found that Bass was not a "natural gas company" within the meaning of the Natural Gas Act because Bass had not previously sold or transported gas attributable to his interest under the lease and had not authorized Shell to do so.[35] Since Bass had made no sale in interstate commerce for resale, he had rendered no service to the interstate market and was within the reach of Section 7(b).[36] In particular, the Commission stated:[37]

> *The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell had no right to Sell.* We will not so alter the basic property rights of mineral owners through the fiction of Section 7(b) application. *El Paso is charged with notice of the limitations on Shell's power to contract,* for such limitations preceded the Shell-El Paso Agreement by seven years and were expressed in the very instrument which marked Shell's inception of title, the 1956 farmout agreement. We note that the Shell-El Paso gas contract did not purport to cover any gas

[34] Complaint of El Paso Natural Gas Company and Petition for Issuance of a Declaratory Order, *El Paso Natural Gas Co.* v. *Perry R. Bass,* Docket RP73-45, filed September 26, 1972, at 1. *Compare* El Paso's request in the instant case for an order directing Mineral Interest Owners to secure Commission authorization before they can "divert natural gas from its present movement in interstate commerce. . . ." (Pet. at 1)

[35] 48 F.P.C. at 1276.

[36] *Id.* at 1275-1276.

[37] *Id.* at 1276-1277.

save that produced from 'the properties owned by Shell.' In law, Shell contemplated selling, and El Paso contemplated buying, Shell's gas. *Neither party can be heard to say that the gas contract can function to impair the pre-existing title of Bass, who was not a party to the gas contract and who could not have prevented its execution. El Paso's rights to purchase gas from the James Ranch Well can rise no higher than Shell's rights to sell that gas, yet El Paso seeks that result by its claim that it is* [331] *entitled to purchase Bass' gas until this Commission orders otherwise.*"

* * * *

"At the time of the execution of the Shell-El Paso contract, and at the time of our certification of the sale and the facilities there provided for, *Bass was a royalty owner.* Bass so remained until the happening of the contingency-payout to Shell of its well costs—which triggered Bass' right to convert its royalty interest to a working interest. As a royalty owner, Bass was not a "seller" within the meaning of the Natural Gas Act and was not in any way subject to our jurisdiction. This is the express holding of *Mobil Oil Corp.* v. *F.P.C.*, 463 F.2d 256 (CADC-1971) cert. denied 406 U.S. 976 (1972), which overturned Opinion No. 562, 42 FPC 164. Section 7(b) operates only on "natural gas companies," that is, as defined in Section 2(6) of the Act, those who transport or sell for resale in interstate commerce. It follows, therefore, that Section 7(b) does not apply to Bass, since Bass is neither a seller or transporter at this time." (Emphasis supplied.)

The Commission's rationale in *Bass* is clearly applicable to this case. In both cases, the gravamen of El Paso's complaint has been substantively the same, i.e., that abandonment authorization under Section 7(b) was required prior to the "diversion" of natural gas from alleged present movement in interstate commerce.[33] Likewise, in both cases, the thrust of El Paso's arguments has been that in some manner it acquired a right to purchase gas attributable to a mineral interest through dealings with an independent third party (Gulf) which had no right to sell such gas even though El Paso was on notice of the third party's limited rights.[34] Moreover, in the instant case, the mineral [332] estate of the Mineral Interest Owners, unlike the option retained by Bass, has not been created from the lease under which the sales to El Paso are made. Since Mineral Interest Owners have no present or future interest in that lease, they are even further removed from the agreement with El Paso than was Bass. Thus, no conceivable basis exists for finding that gas from the mineral estate of Mineral Interest Owners has previously been dedicated to the interstate market, and as in *Bass* the Commission should find and declare that Mineral Interest Owners are not required to obtain abandonment authorization under Section 7(b) prior to commencing the sale of gas to Intratex.

The Commission recently reiterated the *Bass* doctrine in Opinion No. 724 issued March 18, 1975, in *Blair-Vreeland,* Docket CI74-331. In denying rehear-

[33] See footnote 34, *supra.*

[34] See footnote 11, *supra.*

ing in Opinion No. 724-A issued May 14, 1975, the Commission stated:

> We will also elaborate on our comments on the *Bass* case. In doing so, we agree with the following statement of that case offered by Blair-Vreeland:
>
> > . . . In *Bass* the question was not what Bass could bestow on Shell, but what Bass in fact did bestow [on Shell] by way of a farmout agreement. Bass retained a 1/8th override convertible into a 1/2 working interest after payout of the cost of drilling the well to Shell. Shell attempted to dedicate 100% of the gas [to El Paso] and the Commission held that the gas to which Bass was entitled (1/2) was not dedicated because it was never owned by Shell. (Application, pp. 10-11)
>
> The question before the Commission was whether Shell's dedication to El Paso included the portion of the acreage covered by the working interest held by Bass. The Commission held that it did not, and in so holding, stated conclusions entirely consistent with those we have reached in the instant case; . . .

[333] Similarly, in this case the question before the Commission is whether Gulf's dedication to El Paso included or is binding upon the gas attributable to the mineral estate of Mineral Interest Owners. As the Commission recognized in *Bass* and reiterated in *Blair-Vreeland,* even if Gulf had attempted[40] to dedicate the gas of Mineral Interest Owners, there would have been no dedication because such gas was never owned by Gulf. Since El Paso's rights to purchase gas attributable to the mineral estate of the Mineral Interest Owners can rise no higher than Gulf's rights to sell that gas, and since Gulf neither had nor ever asserted any right to sell such gas, it is clear that there is no merit to any claim that Mineral Interest Owners are required to obtain prior permission and approval of the Commission before commencing deliveries under their contract with Intratex.

[40] It is clear, however, that Gulf has never attempted to dedicate the gas attributable to the mineral estate of Mineral Interest Owners.

El Paso futilely attempts to distinguish *Bass* on the grounds that (1) in *Bass,* the Commission did not consider whether a party in the position of Gulf must obtain abandonment authorization before the lessor may "back in" to the working interest, and (2) in *Bass,* sales of gas were "diverted" from one interstate pipeline to another interstate pipeline while in this case the sale to Intratex will "divert" gas from the interstate to the intrastate market. Neither of these alleged distinctions undercuts in the slightest the controlling effect of the *Bass* decision on the issues raised by El Paso's petition. As detailed *infra* at pp. 17-20, there is absolutely no merit to El Paso's suggestion that Gulf must obtain abandonment authorization to "effectuate the transfer by reversion" to Mineral Interest Owners of their mineral estate upon termination of Gulf's 50-year fixed-term leasehold estate.[41]

El Paso's "diversion" distinction likewise is meaningless because the holding in *Bass* was clearly not

[41] We assume that El Paso's "back in" assertion is the same as its reference to "transfer by reversion."

based upon [334] whether the purchaser to whom Bass sold his gas was an interstate or an intrastate pipeline. Moreover, despite El Paso's repeated assertions to the contrary, Mineral Interest Owners' sale of gas to Intratex will not *divert* gas from the interstate to the intrastate market. As previously noted, before any such "diversion" could occur, there must have been some prior dedication to the interstate market of the gas reserves attributable to the mineral estate of Mineral Interest Owners. But in light of *Mobil*, *Bass* and *Blair-Vreeland,* there has been no such dedication and therefore there will be no such diversion.

C. *El Paso's Other Suggestions*[42] *Are Likewise Without Merit*

El Paso suggests that Gulf must obtain abandonment authorization pursuant to Section 7(b) of the Act in order to "effectuate the transfer by reversion" to Mineral Interest Owners of the mineral estate which they will hold upon termination of Gulf's 50-year fixed-term lease on July 14, 1975. Undoubtedly El Paso is attempting to analogize the situation in this case to the situation where a lessee selling gas to an interstate pipeline voluntarily transfers his working interest to a third party who must obtain certification and continue the sale unless abandonment authorization is approved by the Commission. However, the Commission rejected a similar "suggestion" in *Bass* stating (48 F.P.C. at 1276):

[42] As pointed out in footnote 3, *supra,* El Paso takes no position as to how the Commission should resolve the controversy which is the subject of El Paso's petition.

> "The Commission recognizes the legal requirement that when an assignment of a lease occurs, the successor steps '* * * into the shoes of a predecessor [and] takes the properties * * * subject to any benefits and infirmities inherent therein'. *Graridge Corp., et al,* Opinion No. 408, 30 FPC 1156 at 1162. Shell took the James Ranch Lease subject to the infirmity that it could not sell Bass' gas, or bind Bass to a gas sales contract."

[335] The same rationale applies in this case because Gulf-Warren could not sell the gas attributable to the mineral estate of Mineral Interest Owners or bind them to its gas sales contracts with El Paso.

Further, El Paso's "suggestion" is patently fallacious because upon termination of Gulf's leasehold estate on July 14, 1975, there will be nothing for Gulf to transfer to Mineral Interest Owners. It is an elementary rule of property law that for Gulf to "effectuate a transfer" Gulf must have a property right to convey. Upon expiration of the 50-year term lease, Gulf will have no right, title or interest in the minerals underlying that acreage and, therefore, will have no right which could be transferred or conveyed. This result necessarily follows from the fact that an oil and gas lease is a determinable fee which upon termination, for whatever reason, automatically vests the absolute fee simple title in the owner of the mineral estate less whatever minerals have been produced and marketed.[43] In this case Gulf's leasehold estate will simply cease to exist on July 14, 1975 at which time the fee simple title to the mineral estate will automatically vest in Mineral

[43] *Duke* v. *Sun Oil Co.,* 320 F.2d 853, 858 (5th Cir. 1963).

Interest Owners. In light of the decision in *Gulf Oil Corp.* v. *Southland Royalty Co., supra,* Gulf could not prevent this vesting since it will have no residual legal interest in the lease.[44] For the same reason, upon termination of its lease, Gulf will have no interest which it could transfer to Mineral Interest Owners. Thus, no "transfer by reversion" will take place over which the Commission could exercise its abandonment authority, even assuming that jurisdiction over such a transfer existed.[45]

[336] El Paso also suggests that Warren may not reduce sales of residue gas to El Paso without prior Commission approval.[46] The short answer to this "suggestion" is that although there will be a reduction in the actual volumes of residue gas delivered to El Paso after July 14, 1975, there will be no reduction in the volumes which Warren contracted to sell to El Paso

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[44] *See Haby* v. *Stanolind Oil & Gas Co.,* 228 F.2d 298, 305 (5th Cir. 1955), in which the court held the equitable rule against forfeiture could not be applied to a terminated lease since upon termination the lessee had no interest which could be forfeited.

[45] Clearly the Commission has no jurisdiction under the Natural Gas Act to determine when or whether a mineral leasehold estate terminates. These are matters of state property law which are the exclusive concern of the courts where the property lies. *Sunderland* v. *U.S.,* 266 U.S. 226, 232-233 (1924). In this case, the Supreme Court of Texas has determined that Gulf's leasehold estate terminates on July 14, 1975. *Gulf Oil Corp.* v. *Southland Royalty Co., supra.* For the Commission to contravene this decision by holding that such lease did not terminate unless and until Gulf obtained Section 7(b) abandonment authorization would constitute an impermissible attempt to extend its authority to areas of purely local concern.

[46] El Paso does not cite the statutory authority for any such Commission approval but presumably El Paso is referring to Section 7(b) abandonment authorization.

and which the Commission certificated to be sold under such contract." As previously detailed, the contracts between Warren and El Paso did not and could not include any volumes of gas attributable to the mineral estate of Mineral Interest Owners. Thus, there will be no reduction in the volumes of gas covered by and dedicated under the Warren-El Paso contracts and under the related certificates issued by the Commission and, therefore, it is clear that Warren is not required to obtain any type of "prior Commission [337] authorization."[47] However, even if Warren or Gulf is required to obtain some type of Commission authorization because of the termination of Gulf's fixed-term leasehold estate on July 14, 1975, there would be no effect on the unrelated right of Mineral Interest Owners to commence sales to Intratex of gas attributable to their mineral estate without obtaining Section 7(b) abandonment authorization. In other words, since neither Gulf nor Warren ever owned or sold gas attributable to the mineral estate

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[47] In its petition, El Paso acknowledged that after July 14, 1975 Warren will continue to deliver to El Paso 35,000 Mcf per day of "surplus residue gas" in accordance with the subject contracts. Similarly, it should be noted that Gulf will continue delivering gas to Warren although there will be a reduction in the volumes delivered after July 14, 1975, i.e., Gulf will not cease deliveries to Warren.

[48] The reason that Warren requires no "prior Commission authorization" to reflect the reduction in the actual volumes of gas delivered to El Paso on or after July 14, 1975 is analogous to the situation where there is a reduction in deliveries by an interstate seller due to the depletion of one or more wells on acreage covered by a certificated contract but deliveries of gas continue from the remaining wells. The same is true with respect to Gulf's deliveries to Warren.

of Mineral Interest Owners, sales of gas to Intratex from such mineral estate are completely separate from and independent of any Commission authorization or permission which Warren or Gulf may have to obtain because of the termination of Gulf's leasehold estate.

Conclusion

For the foregoing reasons, Mineral Interest Owners submit that the Commission should find and declare that Mineral Interest Owners are not required to obtain any prior Commission authorization in order to commence sales to Intratex of gas attributable to the mineral estate they will hold on termination of Gulf's lease on July 14, 1975. Any different result would be in irreconcilable conflict with the D. C. Circuit's decision in *Mobil Oil Corp.* v. *F.P.C., supra;* would require the Commission to overrule its decision in *El Paso Natural Gas Co.* v. *Perry R. Bass, supra;* and would [338] contravene the decision of the Supreme Court of Texas in *Gulf Oil Corp.* v. *Southland Royalty Co., supra.*

Respectfully submitted,

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[339]

EXHIBIT A

Mineral Interest Owners

Percentage Ownership of Mineral Estate
(Calculated on Acreage Basis)

	% Ownership
Southland Royalty Company	47.0
William Y. Penn, *et al.*, Trustees, Nancy Elizabeth Penson, Penn Resources, Inc., Elizabeth Hudson Penn	8.6
Trustees Under the Will of Warren Wright, Deceased	25.7
Total Mineral Interest Owners	81.3
Other Mineral Owners	18.7
TOTAL	100.00

[340]

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[341]

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

IN THE MATTER OF:

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO, INC.

(FILED JUNE 20, 1975)

Initial Brief of Mitchell Energy Corporation

Mitchell Energy Corporation ("Mitchell") pursuant to the Federal Power Commission's ("Commission") "Notice of Extension of Time and Revision of Briefing Schedule" issued in the above-captioned proceeding on June 5, 1975, respectfully submits this initial brief.

I.

STATEMENT OF ISSUES

Mitchell hereby adopts the statement of issues as submitted by Mineral Interest Owners in its brief in this proceeding. The threshold issue is whether parties who succeed to an interest in natural gas producing acreage which interest has not previously been committed to interstate commerce are obliged to continue the service previously rendered to an interstate carrier until granted the right to abandon the facili-

ties used to render such service by the Commission pursuant to section 7(b) of The Natural Gas Act ("Act").

Should the Commission decide that the new interest owners are so obligated, then it becomes imperative that the nature and extent of the service to be rendered be correctly defined.

[342]

II.

Argument

Mitchell respectfully submits that the Commission's Opinion No. 733 issued June 11, 1975, is erroneous insofar as it seeks to exercise jurisdiction over any reserves not connected to facilities rendering jurisdictional service. Before the Commission can compel the continuation of a service pursuant to its abandonment authority under section 7(b), it must be demonstrated that the service in question is within the jurisdiction conferred upon the Commission by the Act. In the long history of defining the jurisdictional characteristic of facilities used for the sale for resale of natural gas in interstate commerce, one prerequisite has been paramount—no Commission jurisdiction attaches until the natural gas flow in interstate commerce has commenced. As the Tenth Circuit stated in *Saturn Oil & Gas Co.* v. *FPC*, 250 F.2d 61, 68 (10th Cir. 1957), *cert. denied*, 355 U.S. 956 (1958):

> "Until there is a sale of natural gas produced by such operations and installations in interstate commerce for resale, they are exempt. In the event of such a sale, the jurisdiction of the Com-

> mission applies but only because of the sale and only to the extent that the Natural Gas Act confers jurisdiction."

This jurisdictional limitation has been recently acknowledged by the Commission in Opinion No. 638 * wherein the power and scope of section 7(b) were described as follows:

> "Section 7(b) operates for the protection of the interstate market, by requiring Commission action before (1) jurisdictional facilities can be abandoned by the facilities owner, and (2) service rendered by means of such facilities [343] can be abandoned. Section 7(b) has never been interpreted to reach beyond these two express areas of concern; and certainly the language chosen by Congress is clear enough on its face to militate against the expansion of our 7(b) powers. (Footnote omitted)
>
> "The legislative history of Section 7(b) of the Act adequately demonstrates that it was the intent of Congress to preclude the cessation of jurisdictional service or the removal of the necessary facilities to provide such service once it had authorized the Commission absent authorization permitting its termination." *

This jurisdictional limitation has been recognized by the Commission and affirmed by the courts. In *J.*

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* *El Paso Natural Gas Co.* v. *Perry R. Bass*, 48 FPC 1269 (1972).

* Hearings before the House Subcommittee on Interstate and Foreign Commerce, April 2, 1936, page 124.

M. Huber Corp.[*] the Commission adopted the position that the jurisdictional language of the Act, rather than the contractual language, establishes the jurisdiction over the service rendered by a natural gas company. This holding was affirmed by the Third Circuit.[*] Huber was engaged in the sale of natural gas to an interstate pipeline under a contract which required the sale and purchase of all the natural gas produced by Huber from certain acreage. Huber, dissatisfied with the price, sought to discontinue the sales, and to withdraw a certificate application pending before the Commission. Twelve wells were involved. Eleven of the twelve were attached to an interstate gathering system and one was attached to the pipeline's pumping station, where all gas delivered was consumed intrastate. The Commission held, and the court approved, that the eleven wells from which the gas flow had commenced to the gathering system were within the Commission's jurisdiction; thus, the certificate was issued and abandonment was denied. [344] The last well, from which no gas had flowed in interstate commerce, was found not to be within the Commission's jurisdiction.

Mitchell submits that the jurisdiction of the Commission to compel the continuation of any service is coterminus with the facilities used to render that service. Any undiscovered, undeveloped reserves clearly fall beyond the jurisdiction of the Commission and require the same treatment as the one intrastate well noted in the *Huber* case. The *Huber* doctrine clearly

[*] 14 FPC 340 (1955).

[*] *J. M. Huber Corp.* v. *FPC*, 236 F.2d 550 (3rd Cir. 1956), *cert. denied*, 352 U.S. 971 (1957).

demonstrates that unconnected reserves are beyond the Commission's jurisdiction under section 7. To demonstrate the anomoly of this situation, consider the situation where a pipeline purchaser complains that a producer has illegally abandoned service. Where the abandoned service is alleged to be from facilities from which gas has flowed in interstate commerce, the Commission under *Huber* need only order that the facilities and service be restored. However, where the alleged abandoned service is the failure to deliver from "dedicated" but undiscovered or undeveloped reserves, the Commission's only recourse is to order development. This is precisely the authority that has been denied by the section 1(b) exemption of production and gathering from the jurisdiction of the Commission.[*]

In the present proceeding, it is within the Commission's jurisdiction to require any successors to facilities now within the Commission's jurisdiction to continue to provide service now provided by such facilities until such time as the abandonment is authorized pursuant to section 7(b). It is wholly outside the grant of authority under section 1(b) of the Act for the Commission to require that any other reserves be sold to interstate commerce from any further development.

[345] WHEREFORE, Mitchell respectfully requests that the Commission render a declaratory judgment compelling continuation of service from all jurisdictional facilities rendering service to the interstate

[*] *Colorado Interstate Gas Co.* v. *FPC*, 324 U.S. 581, 602-603, *Lone Star Gathering Co.*, 28 FPC 683 (1962).

market on July 14, 1975, and specifically acknowledging the Commission's lack of jurisdiction to compel the sale in interstate commerce from any other facilities.

Respectfully submitted,

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Its Attorney

June 20, 1975

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

[346] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

IN THE MATTERS OF

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(RECEIVED JUNE 20, 1975)

Initial Brief of Texaco Inc.

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[347] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

IN THE MATTERS OF

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Initial Brief of Texaco Inc.

Texaco Inc. (Texaco) hereby files its Initial Brief in these proceedings pursuant to Section 1.29 of the Federal Power Commission's (Commission) Rules of Practice and Procedure (Title 18 C.F.R. 1.29).

I.

STATEMENT OF THE CASE

On January 20, 1975 El Paso Natural Gas Company (El Paso) filed in Docket No. CP75-209 a petition for a declaratory order to resolve, in essence, one question concerning gas production from property currently subject to a lease held by Gulf Oil Corporation (Gulf) and others, which lease will expire on July 14, 1975. At that time all mineral rights, including the right to natural gas production, shall vest in the reversionary mineral interest owners, including Exxon Corporation (Exxon) and a group of companies collectively referred to in this case as Mineral Interest Owners.

Gulf is currently making percentage-type sales of casinghead gas to Warren Petroleum Company, a Division of Gulf Oil Corporation (Warren) from the above-mentioned property in Crane County, Texas.

Warren in turn sells the surplus residue gas from its Waddell Gasoline Plant to El Paso, which ultimately resells the gas in interstate commerce.

[348] On April 8, 1975, Texaco field in Docket No. CI75-594 its petition for a declaratory order, which petition sets forth facts that are identical in all material respects to the facts set forth in El Paso's petition. Gulf holds a 50-year fixed term oil and gas lease covering certain property in Ector County, Texas. When this lease expires on August 7, 1975, Texaco's rights to 25 percent of the minerals as a reversionary mineral interest owner shall vest, and such rights include the right to natural gas production.

Gulf is currently making percentage-type sales of casinghead gas from its Ector County leasehold to Phillips Petroleum Company (Phillips). Phillips then sells the residue gas from the tailgate of its Goldsmith Plant to El Paso, which resells the gas in interstate commerce.

In its June 3, 1975 order to consolidate proceedings the Commission recognized similarity both in the underlying facts and in the legal question presented by Texaco's petition and El Paso's petition.

II.

ISSUE

Texaco's petition for declaratory order states the fundamental issue which is raised both by itself and by El Paso's petition for a declaratory order. That issue is whether a lessee, by making an interstate gas sale, can commit more than its real property interest

(*i.e.*, its rights under its lease), thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act.

III.

Argument

It is Texaco's firm position that the above-stated issue must be answered in the negative. As a royalty owner, [349] Texaco is in no way a party to the present contract by which Gulf sells production from the Ector County property to Phillips. Neither is Texaco a party to the residue gas sales contracts through which Phillips sells gas from the Goldsmith Plant to El Paso. This being the case, Texaco has never directly or indirectly consented to or acquiesced in the commitment by Gulf and Phillips of their gas to an interstate disposition. When the 50-year term of Gulf's lease on the Ector County property expires on August 7, 1975, Gulf's leasehold estate and Texaco's royalty interest will be extinguished, and Texaco as the owner of an unleased one-fourth mineral interest will become the owner of all operating rights in such interest.

It is also clear that Exxon and Mineral Interest Owners, as the reversionary interest owners of the property covered by Gulf's lease on the Crane County property, should in no way be bound by the lessee's actions or by that lease when it expires on July 14, 1975. These reversionary interest owners, like Texaco with the Ector County property, should be free to do as they choose with their share of gas production upon expiration of the lease.

As set forth in its petition for declaratory order, Texaco adopts all arguments made by Exxon and by Mineral Interest Owners in their respective pleadings dated March 3, 1975. Exxon's pleading at page 2 states that the "thrust of El Paso's argument would be that it, in some manner, acquired a right to purchase that which Gulf had no right to sell." Exxon correctly asserts that it would be deprived of its property without due process of law in violation of the Fifth Amendment to the United States Constitution if Exxon were required to deliver involuntarily its gas to El Paso after expiration of the issue. Likewise, Texaco's Constitutional rights would be violated if it were forced to sell to El Paso after Gulf's lease in Ector County terminates. As stated at 16 Am.Jur. 2d 946, "Substantive due process may be roughly defined as the constitutional guaranty that no person shall be deprived of his life, liberty, or property for arbitrary reasons. . . ." Since Texaco [350] has a vested mineral fee interest that will become absolute and unencumbered on August 7, 1975, it would be an orbitrary and unconscionable deprivation of property to require Texaco to sell its gas to any given purchaser.

Gulf, in its Docket No. CI75-594 pleading dated May 9, 1975, demonstrated that it will not need to obtain abandonment upon expiration of its lease on the Ector County property. Gulf therein mentions that it sells gas from such lease to Phillips, and that Texaco has the same legal position as Exxon and Mineral Interest Owners "as described in the pleadings of said parties filed in Docket No. CP75-209." No abandonment authorization need be obtained by

Texaco, Gulf or Phillips in order for Texaco to make a different disposition of its gas upon termination of the Ector County lease. The discussion at page 5 of Exxon's pleading, explaining why Warren will not require any abandonment authority concerning gas from the Crane County lease, is equally applicable in showing why Phillips will need no abandonment authorization concerning gas from the Ector County lease.

Both Exxon and Mineral Interest Owners have adequately demonstrated that no abandonment by anybody would be necessary or proper when Gulf's lease in Crane County terminates. There will be no transfer of rights for the Commission to consider when Gulf's leases in Crane County and Ector County expire, for the leasehold estates will vanish, and the reversion will occur by operation of law. To argue that any abandonment authorization would be required before Texaco could make a new disposition of its share of gas from the Ector County property upon expiration of the lease would be to argue that state law concerning passage of title must be overturned and revolutionized. The fact that the Commission has no jurisdiction under the Natural Gas Act to determine when or whether a mineral leasehold estate terminates is mentioned in the March 3, 1975 pleading of Mineral Interest Owners on page 19, footnote 46.

Strong additional support for finding that the Commission lacks authority to adjudicate matters of title [351] can be found in the Tenth Amendment to the United States Constitution. That amendment, as interpreted in *Erie Railroad Company* v. *Tompkins,* 304 U.S. 64 (1938), reserves to the states all powers

not given to the federal government by the Constitution. At 304 U.S. 78 the Court held:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts."

It is also established that the "tenure, transfer, control and disposition of real property are matters which rest exclusively with the state where the property lies. . . ." (*Sunderland* v. *United States,* 266 U.S. 226 at 232-33 (1924)). Since there is no expressed or implied power given to the federal government by the Constitution to interfere with the traditional authority of the states to adjudicate passage of title to real property, the federal government has no such power. If the contrary were true, it would then be impossible for anyone to be certain of his rights under any mineral deed. For example, if the Commission should determine here that the abandonment provisions of Section 7 of the Natural Gas Act attach to real property itself, rather than the legal interest held by the party committing gas to interstate commerce (*i.e.,* the leasehold interest), land

titles will become encumbered in perpetuity. State statutes of limitations serve the valid public policy purpose of clearing land titles after prescribed periods of time of possession by the land owner. Yet, these state laws would apparently be thwarted by the intervention of [352] a new and novel federal common law concept of property, *i.e.*, Section 7 of the Act. Such a result would definitely not be in the public interest, and it was clearly not intended by the passage of the Natural Gas Act. Furthermore, this result is prohibited by the Fifth and Tenth Amendments to the United States Constitution, as demonstrated above.

WHEREFORE, Texaco urges the Commission to hold that a lessee, by making an interstate gas sale, cannot commit more than its real property interest (*i.e.*, its rights under its lease), the result of such holding to be that no abandonment authorization for any party will be necessary or appropriate in regard to gas production from the Ector County property upon termination of Gulf's lease on August 7, 1975, regardless of what disposition is made of the gas at that time.

Respectfully submitted,

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[353] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[354]

BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Reply Brief of the Commission Staff

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Washington, D.C.
June 25, 1975

[355]

BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Reply Brief of the Commission Staff

I. INTRODUCTION

This reply brief is filed pursuant to the order of the Commission issued June 3, 1975, as modified by notice issued June 13, 1975, in the above entitled proceeding. Staff's position remains fundamentally unchanged from that stated in its initial brief. However, in view of the arguments in the initial briefs filed, *inter alia*, by Texaco Inc. (Texaco), Mineral Interest Owners, Exxon Corporation (Exxon) and Mitchell Energy Corporation (Mitchell), Staff hereby replies with additional argument. Any issue not discussed in this reply brief is considered by staff to have been treated adequately in its initial brief.

II. ARGUMENT

A. *The recent Commission decision in Opinion No. 733 supports staff's position.*

Mitchell has taken the opportunity in its initial brief to reargue the decision of the Commission in Opinion No. 733, *Mitchell Energy Corporation*, issued June 11, 1975, in Docket No. CI75-296. The contentions advanced by Mitchell in its initial brief in this proceed-

ing have been adequately treated by the Commission in Opinion No. 733.

[356] Aside from dispensing with Mitchell's arguments, Opinion No. 733 reveals a trend in Commission thinking that is particularly relevant to the instant proceeding. Opinion No. 733 is another in a sequence of cases [1] which place the disposition of the gas paramount over the contractual positions of the parties exercising control over the gas. *Mitchell* holds that all gas, whether presently discovered or not, remaining on the acreage now owned by a successor (Mitchell) was, and still is, dedicated to the interstate market in spite of the fact that the original contract dedicating such gas has now expired. Like *Cumberland* and *Blair-Vreeland* before it, *Mitchell* demonstrates that in order to ensure an adequate flow of gas in interstate commerce producers succeeding to an interest in dedicated gas cannot take it out of interstate commerce without Commission consent under Section 7(b) of the Natural Gas Act. In the instant proceeding, the position advocated by Staff in its initial brief is consistent with this precedent.

B. *A Commission order holding Reversioners subject to the provisions of Section 7(b) of the Natural Gas Act would not violate Reversioners' Fifth Amendment rights.*

Briefs submitted by Exxon and Texaco urge that a Commission order consistent with the position advocated by staff would constitute a deprivation of Rever-

[1] See Opinion No. 467, *Cumberland Natural Gas Company*, 34 FPC 132 (1965) and Opinion No. 724, *Blair-Vreeland*, issued March 18, 1975 (53 FPC —), in Docket No. CI74-331.

sioners' property without due process of law in violation of the Fifth Amendment to the Constitution. This constitutional argument raised by Reversioners is without merit. The mere requirement that Reversioners are subject to the provisions of Section 7(b) does not deprive them of property without due process of law. Section 7(b) makes specific provision for a hearing, and in any event Revesioners will ultimately be compensated for their gas at no less than the just and reasonable rate as determined by the Commission.

[357] Nevertheless, it is said that there will be a deprivation of Reversioners' right to determine freely the disposition of their production. Fundamental to the alleged Fifth Amendment violation is the assumption that production from the acreage after the expiration of the subject leases is somehow distinct, for purposes of dedication, from gas produced prior to lease expiration. Armed with that distinction, Reversioners claim that they have a right to dispose of "their production" as they choose unburdened by Commission regulation. As set forth in its initial brief, Staff rejects the initial premise that "Reversioners' gas" is distinct from the rest of the gas underlying the subject leases and is not dedicated to interstate commerce. In fact, the reserves Reversioners will control have been dedicated to interstate commerce and are therfore, subject to the Commission's regulation under its statutory mandate including Section 7(b) of the Natural Gas Act. For the good of the public the rights of Reversioners must give way to the authority of Congressional legislation in matters such as these pertaining to the flow of gas in interstate commerce. In the words of the Supreme Court, "The Fifth Amendment . . . is not a

guarantee of untrammeled freedom of action and of contract. In the exercise of its power to regulate commerce, Congress can subject both to restraints not shown to be unreasonable."[2]

C. *Reversioners' other arguments are likewise without merit.*

It is generally argued by Texaco, Exxon and Mineral Interest Owners that there has been no voluntary commitment by Reversioners of the subject gas so no question of a need for abandonment authority can arise. Staff sees this as the heart of the issue in this proceeding and so takes the liberty to reiterate some of the argument made in its initial brief.

[358] Reversioners, or their predecessors in interest, once held the gas under the subject leases free to dispose of it without restriction. They freely chose to lease the right to produce and dispose of the gas. Thereupon Lessees dedicated that production to interstate commerce. As Mineral Interest Owners point out at page 10 of their initial brief, ". . . gas may only be dedicated to the interstate market to the extent that the seller has authority to dispose of the gas involved." Because production and sale was not limited under the subject leases and Lessees dedicated the entire reserves, the gas that will revert to the interest of Reversioners is committed to the interstate market and permission and approval pursuant to Section 7(b) must precede an abandonment of that commitment.

Mineral Interest Owners and Texaco contend that there can be no "transfer by reversion" over which the

[2] *Virginia Railway Roofing Company* v. *System Federation*, 300 U.S. 515, 558 (1937).

Commission could exercise its abandonment authority. Whether or not Lessees effectuate a "transfer," the end result remains that Reversioners will succees to an interest in gas reserves that have been dedicated to interstate commerce. Like Lessees before them Reversioners are then subject to the provisions of Section 7(b).

Texaco and Exxon further argue that a holding that Reversioners are subject to the provisions of Section 7(b) unlawfully usurps the states' power to determine title to property and forces Reversioners to sell gas to El Paco. To the contrary, there is no question here as to title to the gas nor is there an intent to force a new sale of gas. Reversioners' arguments misstate the intended purpose of Section 7(b) which is to ensure that gas once dedicated may not be diverted from that dedication unless dictated by the public convenience or necessity. In their attempt to make fine distinctions in property rights Reversioners have lost sight of the overriding consideration—the disposition of the gas.

[359] D. *Commission Regulations compel the conclusion that Lessees and Plant Operators are not subject to the constraints of Section 7(b).*

There have been as many different conclusions as there have been briefs filed with regard to the questions whether Lessees and Plant Operators must seek permission and approval pursuant to Section 7(b) to abandon the subject sales upon expiration of the leases. Aside from staff's brief, however, the initial briefs have failed to consider in the instant context the effect of the Commission's Regulations. Staff continues to believe that under the applicable Regulations Lessees

and Plant Operators are not bound to make Section 7(b) applications for abandonment permission and approval upon the expiration of the subject leases.

III. Conclusion

For the reasons set forth herein and in its initial brief Staff urges a Commission decision declaring that after the expiration of the subject leases the requirement to seek permission and approval pursuant to Section 7(b) before diverting the subject gas from its dedicated market applies to Reversioners but does not apply to Lessees or Plant Operators.

Respectfully submitted,

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Edward R. Mark

/s/ George H. Williams, Jr.
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Washington, D.C.
June 25, 1975

[360] (Certificate of Service Omitted in Printing)

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[361] UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP75-209

El Paso Natural Gas Company

Docket No. CI75-594

Texaco Inc.

(Received June 30, 1975)

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[366] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO, INC.

Reply Brief of El Paso Natural Gas Company

EL PASO NATURAL GAS COMPANY ("El Paso") pursuant to Section 1.29 of the Commission's Rules of Practice and Procedure [1] and in accordance with the briefing schedule established herein, respectfully submits this reply brief in the above-styled and docketed proceeding.

I.

INTRODUCTION

This proceeding is a consolidation of two proceedings involving the issue of the necessity for abandonment authorizations pursuant to Section 7(b) of the Natural Gas Act ("Act') as a result of the forthcoming expiration of two 50-year fixed term oil and gas leases.[2] The factual background has been fully set forth in El Paso's Initial Brief in this proceeding.

[1] 18 C.F.R. Section 1.29 (1974).

[2] The lease in Docket No. CP75-209 covers property located in Crane County, Texas, and expires on July 14, 1975. (Hereinafter to be referred to as the "Waddell lease.") The lease in Docket No. CI75-594 covers property in Ector County, Texas, and expires on August 7, 1975. (Hereinafter to be referred to as the "Goldsmith lease.")

II.

ARGUMENT IN REPLY

I. Southland, *et al.*[3] must obtain abandonment authorization in order to discontinue sales of natural gas dedicated to interstate commerce by Gulf, *et al.*[4]

[367] Mineral Interest Owners,[5] Exxon Corporation ("Exxon')", and Texaco Inc. ("Texaco"), all reversionary mineral interest owners under the two 50-year fixed term leases in question and all included in the reference Southland, *et al.*, contend in their initial briefs that they are not required to obtain abandonment authorization under Section 7(b) before initiating sales of gas for resale in intrastate commerce. They claim that the gas attributable to their mineral interests has never been dedicated to interstate commerce and that they therefore do not come within the Commission's jurisdiction. However, Southland, *et al.* must obtain abandonment authorization before sales to El Paso may cease and sales to intrastate purchasers commence.

A. *Mobil Oil Corp.* v. *FPC,* holding that the Commission does not have jurisdiction over conventional landowner royalty holders, is not disposi-

[3] "Southland, *et al.*" refers to all of the reversionary interest owners under both the Waddell and Goldsmith leases.

[4] "Gulf, *et al.*" refers to all current lessees under both the Waddell and Goldsmith leases.

[5] Mineral Interest Owners include Southland Royalty Company, William Y. Penn, *et al.*, Trustees, and Trustees Under the Will of Warren Wright.

tive of the Commission's jurisdiction over Southland, *et al.*

To come within the jurisdiction of the Commission under the Natural Gas Act, one must be engaged in the interstate sale of natural gas for resale or in the transportation of gas in interstate commerce. 15 U.S.C Section 717(b). Mineral Interest Owners contend that during the lease term they are merely holders of a royalty interest and as such are not sellers of natural gas according to the decision of the United States Court of Appeals for the District of Columbia in *Mobil Oil Corp.* v. *FPC,* 463 F.2d 256 (D.C. Cir. 1971), *cert. denied,* 406 U.S. 976 (1972). Since they are not sellers of natural gas they claim that they are not subject to the Natural Gas Act, in particular Section 7(b).

Whether or not Southland, *et al.* have been sellers of natural gas during the terms of the Waddell and Goldsmith leases, it is a fact that Gulf, *et al.* have been sellers in interstate commerce of natural gas produced from the acreage covered by those leases. Upon termination of the leases, Southland, *et al.*,'s reversionary mineral interest owners, will succeed to Gulf, *et al.*'s interest in the leases. Southland *et al.* must take this interest subject to the prior dedication of the gas by Gulf, *et al. See Cumberland Natural Gas Co.,* 34 F.P.C. 132 (1965).

B. Since all the natural gas acreage covered by the Waddell and Goldsmith leases has been dedicated to interstate commerce, Southland, *et al.* are subject to Section 7(b) whether or not they originally initiated sales of gas from the dedicated acreage.

[368] Mineral Interest Owners, Exxon, and Texaco claim that none of the gas attributable to their reversionary interests has been dedicated to interstate commerce since their interests will not come into being until the expiration of the leases in question. Furthermore, they claim they cannot be bound to the sale of natural gas in interstate commerce by Gulf, *et al.* since they never consented to this disposition of the gas.

However, the Commission looks to the history of the producing acreage to determine whether natural gas has been dedicated to interstate commerce. *See Blair-Vreeland,* Op. No. 724, —— F.P.C. ——, (issued March 18, 1975); *Mitchell Energy Co.,* Op. No. 733, —— F.P.C. ——, (issued June 11, 1975). During the term of the lease, Gulf, *et al.* have had all possessory interests in the gas produced, including full right of sale. *Mobil Oil Corp.* v. *FPC, supra.* As a result of their sales of the gas produced for resale in interstate commerce, they dedicated all the natural gas from the acreage covered by the leases to interstate commerce. It is well settled that once dedicated, gas must remain in interstate commerce until the Commission gives abandonment authorization. *Sunray Mid-Continent Oil Co.* v. *FPC,* 364 U.S. 137 (1960).

The important factor is the physical movement of the gas. *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965). The gas from the acreage covered by the Waddell and Goldsmith leases has physically flowed in interstate commerce. The change in ownership of the acreage as a result of the termination of the leases cannot interrupt the jurisdictional flow of the gas.

Mineral Interest Owners state that the Commission cannot compel the initiation of jurisdictional sales. The point here, however, is that jurisdictional sales were initiated at the time that the natural gas attributable to these leases began to flow into El Paso's interstate pipelines. The Natural Gas Act compels the continuation of that activity. *United Gas Pipe Co.* v. *FPC*, 350 F.2d 689, 692 (5th Cir. 1965), *aff'd.* 385 U.S. 83 (1966). Without Commission abandonment authorization, Southland, *et al.* are compelled to continue sales of natural gas to El Paso for resale in interstate commerce.

C. *El Paso Natural Gas Co.* v. *Perry R. Bass* is not dispositive of the issue as to whether Southland, *et al.* need obtain abandonment authorization.

Mineral Interest Owners claim that because of the Commission's decision in *El Paso Natural Gas Co.* v. *Perry R. Bass*, 48 F.P.C. 1269 (1972), they are not required to obtain Section 7(b) authorization in order to cease sales to El Paso and divert the gas for resale in intrastate commerce. As pointed out in El Paso's initial brief, however, the situation in *Bass* was vastly different from the present situation.

[369] In *Bass*, the producer diverted the gas attributable to his working interest from one interstate pipeline company to another interstate pipeline company. The gas was never removed from the interstate market. In the present case, however, Mineral Interest Owners have already arranged to sell the gas attributable to their interest to an intrastate pipeline for resale in intrastate commerce.[6] Thus, the instant proceeding deals with the public interest in maintaining the flow of interstate gas, whereas *Bass* did not.

Furthermore, *Bass* dealt with a farmout agreement whereas the instruments involved in the instant proceeding are fixed term leases. In supporting its decision in *Bass*, the Commission stressed that "[f]armouts serve the public interest, for they are means whereby an available drilling site is placed with a person having available risk capital to the end that the site is explored. Without farmout arrangements, exploration will be limited, for exploration would then occur only when there is a coincidence of site availability and exploration risk capital in one producer." *Id.* at 1277. The Commission felt that if abandonment authorization were required of the producer, "[t]he future use of farmout agreements in the natural gas producing industry would be discouraged,"

[6] Mineral Interest Owners have agreed to sell to Intratex Gas Company ("Intratex") the gas attributable to the fee simple mineral estate they will hold on July 14, 1975, following the termination of Gulf's leasehold estate in the Waddell lease. Intratex, an intrastate buyer of gas, is a wholy-owned subsidiary of Houston Natural Gas Corporation, a distributor of gas in the City of Houston, Texas, and environs. (Mineral Interest Owners Initial Brief p. 3.)

a result "clearly contrary to the public interest." *Id.* at 1278.

However, the instruments involved in this case, fixed term leases, do not particularly serve the public interest. In fact, on page 4 of their initial brief, Mineral Interest Owners point out that "[s]uch term oil and leases now are extremely rare, in fact almost unique . . . and . . . 'of not practical importance' in Texas. Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas,* 7 Tex. L. Rev. 1, 15 (1928)." Thus, in contrast to the *Bass* situation, requiring abandonment authorization in this instance would not pose a threat to the public interest by impeding existing patterns of trade or usage in the gas industry.

Also, in *Bass,* Shell and Bass explicitly agreed that Shell was to sell no gas attributable to Bass' working interest. Therefore, the Commission found that Bass was not bound by Shell's sale of natural gas for resale in interstate commerce. On the other hand, during the term of the lease, Gulf, *et al.* had the authority to and did dedicate *all* of the gas produced from the acreage covered by the leases to interstate [370] commerce. Southland, *et al.* are subject to this prior dedication and must not cease sales of natural gas for resale in interstate commerce without Commission authorization.

D. Requiring abandonment authorization of Southland, *et al.* will not deny them of their constitutional rights.

Texaco and Exxon claim that if they must obtain abandonment authorization prior to selling the gas attributable to their interests to the buyers of their choice, they will be deprived of their property without due process of law in contravention of the Fifth Amendment. El Paso contends that no unconstitutional deprivate will occur.

El Paso does not dispute the ownership of the natural gas produced from the acreage covered by the leases. El Paso admits that *Gulf Oil Corp.* v. *Southland Royalty Co.,* 496 S.W.2d 547 (Tex. 1973), settled the issue as to when the Waddell lease will terminate. Southland, *et al.* will own the property including the natural gas produced therefrom upon expiration of the Waddell lease. Texaco and Exxon will in no way be deprived of their rightful property interests.

However, El Paso does contend that Texaco and Exxon are subject to the prior dedication of the gas attributable to their interests to interstate commerce. It has been well settled by the Supreme Court of the United States that a gas flow, once jurisdictional, remains so until Section 7(b) abandonment authorization has been obtained from the Commission. *Sunray Mid-Continent Oil Co.* v. *FPC, supra; California* v. *Lo-Vaca Gathering Co., supra.* The natural gas produced from the acreage which will revert to Exxon and Texaco has been dedicated to interstate commerce by the actions of the lessees. To require that Texaco and Exxon obtain abandonment authorization before

removing the gas from its interstate flow does not deprive them of their constitutional rights but merely requires that they comply with a constitutionally valid scheme to which they are subject.

II. Gulf, *et al.* may not terminate their sales of natural gas without first obtaining abandonment authorization from the Commission.

Gulf argues that as a lessee producer it could sell and dedicate to interstate commerce no more than the natural gas attributable to its own interest and that since its interest terminates with the expiration of the two leases in question, it will have no more gas to sell and does not need to obtain Section 7(b) authorization before ceasing sales of natural gas for resale in interstate commerce. It is El Paso's contention that since Gulf has dedicated to interstate commerce all the gas produced from the acreage covered by the leases, it must continue to supply this gas for resale in interstate commerce. Dedication implies a continuing duty to provide service which cannot be abrogated by means of private arrangement but only by Commission authorization pursuant to [371] Section 7(b) of the Natural Gas Act. *Hunt* v. *FPC*, 306 F.2d 334 (5th Cir. 1962), *rev'd on other grounds*, 376 U.S. 515 (1964).

A. To hold that Gulf, *et al.* are required to obtain abandonment authorization before they may cease their present sales of natural gas for resale in interstate commerce would not contravene a decision of local property law.

Mineral Interest Owners, in their contention that Gulf, as lessee producer, is not required to obtain

Section 7(b) authorization before terminating its present sales of natural gas for resale in interstate commerce, state that for the Commission to hold otherwise would be to contravene a decision of local property law, something clearly outside the Commission's jurisdiction. It is El Paso's position that *Gulf Oil Corp.* v. *Southland Royalty Co., supra,* in which the Supreme Court of Texas held that the Waddell lease terminates on July 14, 1975, at which time the mineral interests thereunder revert to the reversionary interest owners, does not affect the requirement that Section 7(b) authorization be obtained before present sales of natural gas for resale in interstate commerce may cease.

Gulf Oil Corp. v. *Southland Royalty Co., supra,* dealt with the issue of title, a question of local property law. Nowhere in the opinion does the court attempt to determine the duties of the parties under the federal regulatory scheme of the Natural Gas Act or the jurisdiction of the Commission. Furthermore, the duties of the lessees and the jurisdiction of the Commission are not affected by that decision. "The intention of Congress cannot be conclusively determined by reference to concepts and classifications under state law decisions normally disposing of 'private' controversies." *Mobil Oil Corp.* v. *FPC, supra,* at 259. Certainly, the decision of the Texas Supreme Court did not make an exception in this instance to the established principle that a gas flow, once jurisdictional, remains so until abandonment is authorized.

B. Section 154.91 of the Commission's Regulations under the Act requires that Gulf, *et al.* as producers making percentage-type sales are subject to Section 7(b) of the Act.

Section 154.91(e) imposes the requirements of Section 7(b) of the Act upon producers making percentage-type sales to plant operators selling gas in interstate commerce.[7] Gulf, *et al.* clearly fall within Section 154.91(e) for they have been making percentage-type sales to Phillips, a plant operator who is making sales of gas in interstate [372] commerce and who is thereby subject to the certificate requirements of the act. Thus, to cease such sales to Phillips, Gulf must obtain abandonment authorization pursuant to Section 7(b). *See Bill J. Graham, et al.*, Docket No. CI75-626, *et al.*, —— F.P.C. ——, (issued June 16, 1975).

Before the merger of Gulf and Warren in 1971, Gulf also made percentage-type sales of natural gas to Warren. It is noteworthy that if neither Gulf nor Warren are required to obtain abandonment authorization before ceasing their current sales of natural gas for resale in interstate commerce, such mergers could become a way of avoiding Commission regulations. The producer-seller does not have to obtain a certificate to make percentage-type sales to the plant operator. 18 C.F.R. Section 154.91(d). If the Commission decides herein that the plant operator, who makes sales of surplus residue gas in interstate com-

[7] Section 154.91(e) has been judicially confirmed. *See* Sun Oil Co. v. FPC, 256 F.2d 233 (5th Cir. 1958), *cert. denied*, 358 U.S. 872 (1958).

merce, is not required to obtain abandonment authorization before reducing its sales, the percentage-type seller and the plant operator, could divert the casinghead gas originally sold in interstate commerce for resale to unregulated intrastate commerce without first having to obtain any authority under Section 7(b) by merging themselves into one entity as Gulf and Warren have done. Such a result would leave a dangerous gap in the federal regulatory scheme.

C. The decision of the Commission in *El Paso Natural Gas Co.* v. *Perry R. Bass* does not alleviate the necessity that Gulf, *et al.* obtain abandonment authorization before terminating their present sales of natural gas for resale in interstate comerce.

Both Gulf and Exxon, in their initial briefs are of the opinion that because the Commission in *El Paso Natural Gas Co.* v. *Perry R. Bass, supra,* did not find that Shell, as a prior working interest owner, was required to obtain abandonment authorization, neither should the Commission find that Gulf, *et al.* is so required. This conclusion does not follow for two reasons.

The Commission in *Base* never dealt with the issue of whether Shell was required to obtain abandonment authorization. The only issue in that proceeding was whether Bass had to obtain Section 7(b) authorization before selling the gas attributable to his reconveyed 50 percent working interest to a different interstate pipeline company for resale in interstate commerce. Just because Bass was authorized to dispose of the gas to another purchaser without abandonment

approval, it does not necessarily follow that no requirement could be imposed on Shell to prevent this disposition.

In fact, Shell was subject to and did comply with all necessary Commission requirements at the time the 50 percent working interest was reconveyed to Bass. Shell filed a notice of partial cancellation of its rate schedule to reflect Bass' conversion of his overriding royalty [373] interest to a one-half working interest. *El Paso Natural Gas Co.* v. *Perry R. Bass, supra.* Since Gulf, *et al.* fall within Section 154.91(d) of the Commission's Regulations, they were not required to file rate schedules and thus could not file for a partial cancellation. On the other hand, Gulf, *et al.* are subject to Section 7(b) of the Act and thus must file for abandonment authorization. 18 C.F.R. Section 154.91(e) (1974); *Bill J. Graham, et al., supra.*

III. Waren and Phillips may not reduce their sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in large part to production from the leases in question, without prior Commission authorization.

Gulf makes the argument that since Warren's contract with El Paso is only for the sale of "surplus residue gas available for sale" no abandonment approval is needed if reduced sales are merely the result of reduced supplies 'available for sale" (Gulf Initial Brief p. 4). As stated in its initial brief, El Paso does not contend that mere fluctuations in the amounts of surplus residue gas sold by Warren and Phillips to El Paso require abandonment authorization. How-

ever, permanent reductions in sales of natural gas presently flowing in interstate commerce do require abandonment approval. The diversion of natural gas produced from the Waddell and Goldsmith leases upon the termination of those leases will result in a permanent, substantial reduction in the sales of gas by Warren and Phillips to El Paso.

Once natural gas has become jurisdictional, it cannot cease to be so as the result of either prior or subsequent agreements between the parties. *California* v. *Lo-Vaca Gathering Co., supra.* "The service . . . is distinct from the contract." *Sunray Mid-Continent Oil Co.* v. *FPC, supra.*, at 153. The gas sold by Warren and Phillips to El Paso for resale in interstate commerce has been dedicated to interstate commerce. Despite the nature of the contract, once dedication has occurred, the service may not be permanently reduced without prior abandonment authorization.

IV. The public interest requires that abandonment authorization be obtained before sales to the current purchaser may cease.

As stated *supra,* fixed term leases are little used instruments in contrast to the widespread use of farmout agreements as indicated by the Commission in *Bass.* Moreover, the public interest in the continued use of farmouts as a means of encouraging exploration and development of natural gas fields, far outweighs any public interest in the use of fixed term leases. If, however, abandonment authorization is not required of the parties to the instant proceeding, such fixed term leases might become prevalent as a means to thwart the Commission's jurisdiction. It is not dif-

ficult to imagine a situation in which a short term, fixed term lease might be used at a time when there is no available intrastate [374] market for the natural gas produced from the acreage covered by the lease. The lessees would sell the gas to the available interstate market. Upon termination of the lease, however, the reversionary interest owners could choose for themselves whether to sell the gas interstate or intrastate depending upon which market would be the most profitable. No one would be required to obtain abandonment authorization and the gas would pass from under the Commission's jurisdiction.

Such a situation is unthinkable and would make a sham of the goals of the Natural Gas Act, particularly those of Section 7(b). To allow the requirements of Section 7(b) to be so easily avoided, would certainly not advance the public interest in "stability and continuity of service' which "[t]he proscription of abandonment without prior Commission approval was designed to ensure." *Farmland Industries* v. *Kansas-Nebraska Natural Gas Co.*, 349 F.Supp. 670, 680 (D.Neb. 1972), *aff'd.* 486 F.2d 315 (8th Cir. 1973). El Paso repeats its position that an abandonment authorization proceeding is necessary to develop the important public interest considerations involved, especially in this time of critical natural gas shortage, before the gas involved in this proceeding may be diverted from the interstate markets served by El Paso.

IV.

Conclusion

Wherefore, for the foregoing reasons, El Paso Natural Gas Company respectfully requests that the Commission hold that sales of natural gas presently being sold for resale in interstate commerce may not cease as the result of the termination of two 50-year fixed term leases without prior Commission authorization pursuant to Section 7(b) of the Natural Gas Act.

Respectfully submitted,

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[377] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket Nos. CP75-209, *et al.*

El Paso Natural Gas Company, *et al.*

(Filed June 25, 1975)

Reply Brief of Exxon Corporation

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[378] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket Nos. CP75-209, *et al.*

EL PASO NATURAL GAS COMPANY, *et al.*

Reply Brief of Exxon Corporation

I

These consolidated proceedings involve requests for a declaratory order determining whether abandonment authority is required either by the mineral fee owners or their lessees upon the expiration of certain 50-year fixed term oil and gas leases. Exxon Corporation is one of the mineral fee owners under a 50-year fixed term oil and gas lease with Gulf Oil Corporation (Gulf). In its initial brief, Exxon demonstrated that neither it nor its lessee, Gulf, is required to obtain abandonment authority at the end of the lease term. Such a requirement would improperly result in Exxon's being denied the full enjoyment of its mineral fee estate at least expiration and thus deprive it of its property without due process of law in violation of the Fifth Amendment of the Constitution. Moreover, abandonment authorization cannot be required of a service never undertaken.

Exxon has received the initial briefs of the Commission Staff, El Paso Natural Gas Company (El Paso), The People of the State of California and the Public Utilities Commission of the State of California(California), Gulf Oil Corporation (Gulf), the "Mineral Interest Owners", and Texaco Inc. Of these parties, Staff Counsel, El Paso, and California con-

tend that Exxon, as a mineral fee owner, requires abandonment authority at the end of the lease term. They argue that this requirement arises as a result of Exxon's "succession", when the lease expires, to the interests of Gulf which has sold production from its leasehold estate in interstate commerce to El Paso. They further argue that the "public interest" requires this result. We shall deal with their arguments that Exxon requires abandonment authorization topically.[1]

[379] ## II

ARGUMENT

A. There Is No Succession By Exxon To The Interests Of Gulf Upon Lease Termination.

In their initial briefs, Staff Counsel, El Paso, and California argue that Exxon requires abandonment authority upon lease termination before it can sell production from its mineral fee estate to someone other than El Paso because, at that time, Exxon will succeed to the interests of Gulf which has sold production from its leasehold estate in interstate com-

[1] California and El Paso also contend that Gulf requires abandonment authority upon lease expiration. Although Staff Counsel agrees with this result, he maintains that no abandonment application is actually required by Gulf due to his belief that Exxon would be a successor-in-interest to Gulf when the lease expires and the fact that Section 2.64 of the Commission's Rules excuses the filing of an abandonment application where a succession-in-interest is involved. Since only five days has been allotted between the filing of initial briefs and the filing of reply briefs, Exxon has determined to limit this reply brief to the arguments which would require it to obtain abandonment authority. It assumes that Gulf will reply to the arguments that it would require abandonment authorization.

merce to El Paso. This argument has no merit because there is no succession by Exxon to the interests of Gulf at lease expiration.

As Exxon pointed out in its initial brief, when the 50-year fixed term lease expires, Gulf's leasehold estate is simply extinguished. Exxon is not a producer here. When the lease expires Exxon is vested by operation of law with its fee interest in the mineral estate. *Gulf Oil Corp.* v. *Southland Royalty Co.* 496 S.W.2d 547 (1973). Thus there is no succession, or any other form of develovement, by Exxon to the interests of Gulf when the lease expires.

The opposing parties' apparent misapprehension of the legal status of Exxon's interest is rooted in their refusal to acknowledge that Exxon's mineral fee estate and Gulf's leasehold estate are entirely separate and distinct property rights. This distinction is not a 'fiction" as suggested by Staff Counsel. As lessee, Gulf is precluded by the most fundamental tenets of property law from committing or encumbering the fee interests of its lessor, Exxon. No specific prohibition is required in the lease, as suggested by these opposing parties, because Gulf is precluded by law from committing Exxon's mineral fee interests unless Exxon specifically authorized Gulf to do otherwise, and no such authorization was granted.

By attempting to paper over the distinction between Exxon's and Gulf's respective property rights, the opposition seek to obtain Exxon's private property which has never been dedicated to interstate commerce. Exxon has never delivered any production from its mineral fee estate in interstate commerce.

When the lease expires, it will not succeed to Gulf which has made deliveries from its leasehold estate. Because Exxon's property interests are wholly separate from Gulf's property interests, Exxon's mineral fee estate is free of any interstate commitment when the lease expires.

United Gas Improvement Co. v. *Continental Oil Co.*, 391, 392, 1965, cited by the opposing parties is clearly not applicable here. That case merely stands for the proposition [380] that parties, once having voluntarily undertaken an activity, could not avoid Commission jurisdiction over that activity by arguing that state law construed their sale of gas in-place to constitute a transfer of leases. The parties had committed their property to interstate commerce but sought to avoid jurisdiction on the basis of a technicality of state law. In this case the rationale of *FPC* v. *Niagra Mohawk Power Corp.* (347 U.S. 239 1954) controls. There, the court held that the Power Act did not abolish state laws which created property rights. Thus, the Commission could not affect a taking of such property rights simply be refusing to recognize the state laws by which they were created. Similarly, here, the Commission cannot, under the Natural Gas Act, deprive Exxon of its mineral fee interest by ignoring, as the opposing parties urge, the state law by which such interest is established.

The *Mitchell* [2] and *Blair-Vreeland* [3] cases cited by the opposition do not support their succession argu-

[2] Mitchell Energy Corporation, Docket No. CI75-296, Opinion No. 733, issued June 11, 1975.

[3] Blair-Vreeland, Docket No. CI74-331, Opinion Nos. 724 and 724-A, issued March 18, 1975, and May 14, 1975, respectively.

ment. These cases both involve the acquisition by a producer of all or a portion of the leasehold interests of another producer which has sold production from such interests in interstate commerce. Under the Commision's *Grayridge* Doctrine,[4] the acquiring producer succeeds to the interests of its predecessor subject to the predecessor's prior interstate commitment.

Here, the situation is quite different. Exxon is not a successor-in-interest to Gulf under the lease. Instead, Exxon, as Gulf's lessor, was the creator of Gulf's leasehold interests. Whereas the acquiring producer had to take its predecessor's interests as it found them, Exxon takes nothing from Gulf. Exxon's interests are separate and distinct from Gulf's and consequently totally unaffected by them upon lease expiration.

The Commission, itself, recognized in *Blair-Vreeland* that the relationship of lessor-lessee is quite different from the predecessor-successor relationship in a succession situation. In that case (Op. 724-A, pp. 4-5), the Commission distinguished its holding in *Bass*[5] on the very basis that whereas a successor producer acquires its interests subject to the interstate dedication of its predecessor, a lessor's [381] interests are not affected by the interstate dedication of its lessee of its leasehold interests. Clearly, the mineral fee interests of Exxon, as lessor, have not been committed by the dedication of the limited leasehold interest by its lessee, Gulf.

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[4] The Grayridge Corporation, 30 FPC, 1156 (1963).

[5] El Paso Natural Gas Co. v. Perry R. Bass, 48 FPC 1269 (1972).

Finally, the holdings of the *Mitchell* and *Blair-Vreeland* support rather than refute Exxon's position. In those cases, the Commission relied upon the predecessor producer's contract to determine both the extent of the dedication and its correlative abandonment jurisdiction. The Commission concluded that abandonment authority was required before the successor producer could devote the interests it acquired to another use, but only if the predecessor had committed those interests under an interstate contract. Here, Gulf's two surplus residue agreements with El Paso committed production only to the extent of Gulf's leasehold interests. By law, Gulf could do no more. Since Gulf's contracts with El Paso do not, because they could not, cover Exxon's production from its mineral fee interest after expiration of the leasehold interest, no abandonment authority is required by Exxon to devote production from its mineral interest to another use.

B. *"Public Interest" Does Not Create Jurisdiction Where It Does Not Exist.*

Staff Counsel, El Paso and California all contend that the "public interest" requires that the Commission assert jurisdiction over Exxon's production from its mineral fee estate. They make this contention after acknowledging that this case is really one of first impression. However, Commission jurisdiction cannot be created in the name of "public interest" when it does not in fact already exist by statute. Close examination reveals that the opposing parties' so-called "public interest" argument is nothing more than a refuge of last resort when legal and logical analysis has failed.

In any event, the D.C. Circuit definitively settled this issue by rejecting the Commission's assertion of jurisdiction over lessor-royalty owners in the name of the "public interest" in *Mobil Oil Corporation* v. *FPC*, 482 F.2d 256 (D.C. Cir. 1972). There, the Court stated (463 F.2d at 263):

> "If the statutory use of 'seller' or 'sale' of natural gas in interstate commerce is referable to the meaning of these words in ordinary usage, or as likely understood by Congress, the FPC's ruling is clearly unsound. We do not think a different result warranted or mandated on the ground that the purpose of the Act is to protect the ultimate beneficiaries against exploitation by natural gas companies. That was indeed the objective of Congress, see FPC v. [382] Hope Natural Gas Co., 320 U.S. 591, 610, 64 S.Ct. 281, 88 L.Ed. 333 (1944). The FPC is to be commended for attempting to further that objective, but it is not sufficient justification upon which to base an expansion of the Act to activities clearly not within its terms. Congress did not give the FPC carte blanche to take whatever action it might consider appropriate in furtherance of this purpose. The FPC is limited by the provision establishing its jurisdiction, and we do not find in that provision, rooted as it is in a sale in interstate commerce, any basis for reaching out to cover the landowner's lease or its royalty payments. We think it too far removed from the interstate sale. When there is a sale of gas to a pipeline in interstate commerce, the FPC will of course have

> the jurisdiction and the responsibility to exercise control in the interest of the ultimate consumer."

III

Conclusion

Wherefore, Exxon reaffirms its prayer in its initial brief that the Commission declare that its production from the mineral fee estate has not been dedicated and that no abandonment authority is required when the lease expires.

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[383] (Certificate of Service Omitted in Printing)

[384] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(RECEIVED JUNE 27, 1975)

Reply Brief of Mineral Interest Owners

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[386] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Reply Brief of Mineral Interest Owners

Mineral Interest Owners[1] submit the following reply to the initial briefs filed in the captioned case by El Paso Natural Gas Company (El Paso), the California Public Utilities Commission (California) and the Commission Staff (Staff).

PRELIMINARY STATEMENT

As recognized by Staff, the controlling issue in this case "no matter how it is phrased" is whether Mineral Interest Owners must obtain Section 7(b) abandonment authorization before initiating sales to the purchaser of their choice[2] of the gas attributable to the fee simple mineral estate they will hold following the termination on July 14, 1975 of the 50-year fixed-term oil and gas lease held by Gulf Oil Corporation (Gulf) on approximately 46,000 acres in Crane County, Texas. The answer to this controlling question depends on

[1] The Mineral Interest Owners on whose behalf this Reply Brief is filed are listed on Exhibit A to their Initial Brief.

[2] Mineral Interest Owners have elected to sell their gas to Intratex Gas Company, an intrastate buyer of gas, which is a wholly owned subsidiary of Houston Natural Gas Corporation, a distributor of gas in the City of Houston, Texas and environs.

whether the gas attributable to such mineral [387] estate of Mineral Interest Owners has somehow been dedicated by Gulf to the interstate market, i.e. to El Paso. In this connection, it is undisputed that Gulf has not undertaken to dedicate such gas to El Paso.[3]

As detailed in their initial brief, it is the position of Mineral Interest Owners that in light of *Mobil*,[4] *Bass*,[5] and *Blair-Vreeland*[6] there has been no dedication of gas attributable to the mineral estate which they will hold on termination of Gulf's lease on July 14, 1975. Therefore, Mineral Interest Owners are not required to obtain Commission authorization in order to commence sales of such gas.

Staff claims that this position "is based upon the *fiction* that there is a distinction for purposes of dedication between gas from the same reserve produced before and after the expiration of a lease" (Br. 5). In the same vein, El Paso argues that the applicability of Section 7(b) to sales of gas by Mineral Interest Owners cannot be avoided because of "technical concepts of local law" (Br. 11). The short answer to these

[3] As noted in Gulf's initial brief at p. 4:

> It is Gulf's position that in neither case did it purport to dedicate the gas to El Paso which it will not own after expiration of the leases, and that had it attempted to do so, any such dedication would have been ineffective as a matter of law.

[4] *Mobil Oil Corp.* v. *F.P.C.*, 463 F.2d 256 (D.C.Cir.1971), *cert. denied*, 406 U.S. 976 (1972).

[5] *El Paso Natural Gas Co.* v. *Perry R. Bass*, 48 F.P.C. 1269 (1972).

[6] Opinion Nos. 724 and 724-A, *Blair-Vreeland*, Docket No. CI74-331, issued March 18, 1975 and May 14, 1975, respectively.

claims is that Mineral Interest Owners [388] are not relying on any "fiction" or upon "technical concepts of local law"; instead, our position is predicated on basic property rights which cannot be altered through the "fiction" of applying Section 7(b) so as to force Mineral Interest Owners to make sales to El Paso of gas attributable to their reversionary mineral interest. As the Commission noted in *Bass*:

> The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell had no right to sell. We will not so alter the basic property rights of mineral owners through the fiction of Section 7(b) application. (48 F.P.C. at 1276)

While admitting that term leases are "now extremely rare,"[7] El Paso *et al* argue that in light of the present day gas shortage it is in the public interest for the Commission to hold that Section 7(b) applies to sales of gas attributable to the mineral estate of Mineral Interest Owners. Yet it is clear that the desire to keep gas in the interstate market does not create Commission jurisdiction under the Natural Gas Act. In *Mobil,* Judge Leventhal rejected a similar attempt to expand Commission authority stating (463 F.2d at 263):

> We do not think a different result warranted or mandated on the ground that the purpose of the Act is to protect the ultimate beneficiaries against exploitation by natural gas companies. That was

[7] Staff Br. 8. El Paso characterizes term leases as "little used, impractical instruments" (Br. 21).

> indeed the objective of Congress, see FPC v. Hope Natural Gas Co., 320 U.S. 591, 610, 64 S.Ct. 281, 88 L.Ed 333 (1944). The FPC is to be commended for attempting to further that objective, but it is not sufficient justification upon which to base an expansion of the Act to activities clearly not within its terms. Congress did not give the FPC [389] carte blanche to take whatever action it might consider appropriate in furtherance of this purpose. The FPC is limited by the provision establishing its jurisdiction, and we do not find in that provision, rooted as it is in a sale in interstate commerce, any basis for reaching out to cover the landowner's lease or its royalty payments.

At the outset we should also point out that the initial briefs of El Paso *et al,* are sprinkled with correct, but completely irrelevant, statements of law. Thus, Staff states (Br. 6):[8]

> It is well established there can be no withdrawal of gas *once dedicated* to the interstate market from continued interstate movement without permission of the Commission under Section 7(b). (Emphasis supplied)

No one can argue with this statement, but the controlling question in this case is whether gas attributable to the mineral estate of Mineral Interest Owners has been dedicated to the interstate market. Obviously, if gas attributable to their reversionary mineral interest

[8] California makes almost the identical statement (Br.3), while El Paso's brief contains numerous statements of law which simply have no applicability to the controlling issue to be decided by the Commission in this case (Br.10, 11, etc.)

has been dedicated to the interstate market, Mineral Interest Owners cannot remove such gas from the interstate market without first obtaining abandonment authority pursuant to Section 7(b). On the other hand, if no such dedication of their gas has occurred, then Section 7(b) clearly does not apply and Mineral Interest Owners are free to make a sale of such gas to a purchaser of their choice.

[390] Since many of the arguments advanced by El Paso *et al* do not detract from the initial brief of Mineral Interest Owners, the Commission is referred to the appropriate sections of such brief in order to avoid unnecessary repetition. This reply will be limited to a discussion of the fundamental errors in the claims by El Paso *et al* that the gas attributable to the mineral estate of the Mineral Interest Owners has been dedicated to interest commerce and to the lack of merit in the futile attempts of El Paso *et al* to avoid application in this case of the principles enunciated in *Bass*. We see no reason to respond to the arguments of El Paso *et al* based on various successor-in-interest cases.[9] Their reliance on such decisions is obviously misplaced because in those cases the issue before the Commission was whether the assignee of a previously dedicated leasehold interest was bound by such dedication. In those cases there was no question that the assigned leasehold interest had been previously dedicated. By contrast, in this case, the controlling question is whether gas attributable to the leasehold estate of Mineral In-

[9] *Blair-Vreeland, supra;* Opinion No. 408, *Graridge Corp. (Operator) et al*, 30 F.P.C. 1156 (1963); Opinion No. 733, *Mitchell Energy Co.*, Docket No. C175-296, issued June 11, 1975.

terest Owners has ever been dedicated.[10] We do feel constrained to mention that [391] one of the successor-in-interest cases cited and relied upon by El Paso *et al* is the original order (Opinion No. 724) in *Blair-Vreeland*. However, they have completely ignored the order on rehearing (Opinion No. 724-A) in that case. Their omission of any reference to this order on rehearing is understandable because the Commission therein reaffirmed the *Bass* doctrine stating:

> . . . In *Bass* the question was not what Bass could bestow on Shell, but what Bass in fact did bestow [on Shell] by way of a farmout agreement. Bass retained a 1/8th override convertible into a 1/2 working interest after payout of the cost of drilling the well to Shell. Shell attempted to dedicate 100% of the gas [to El Paso] and the commission held that the gas to which Bass was entitled (1/2) was not dedicated because it was never owned by Shell. (Application, pp. 10-11) (Opinion 724-A at p. 4)

Similarly, in this case the question before the Commission is whether Gulf's dedication to El Paso of gas

[10] Nor do we see any reason to reply to Staff's succession to control argument (Br. 10-11) which also assumes that the gas reserves attributable to the mineral estate of Mineral Interest Owners "have been dedicated to interstate commerce". Staff's phrase "succession to control" evidently stems from a recognition by Staff that Mineral Interest Owners are not successors in interest to Gulf. We do not know what Staff may be implying by this new term, but regardless of phraseology, under settled Texas law, upon termination of Gulf's leasehold estate on July 14, 1975, Mineral Interest Owners will hold a fee simple title to their pro rata share of the mineral estate underlying the subject acreage. *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547 (Tex. Sup.Ct. 1973)

attributable to Gulf's fixed term leasehold interest included or is binding upon the gas attributable to the mineral estate which Mineral Interest Owners will hold on July 14, 1975. Since Gulf had no legal right to dedicate the gas of Mineral Interest Owners and has expressly disclaimed any intention of so doing, we believe that the principles enunciated in *Bass* and reiterated in *Blair-Vreeland* on rehearing are dispositive of the decision to be issued by the Commission in this case.

We have also ignored El Paso's arguments that Gulf, as lessee, and Warren Petroleum Company, as plant operator and seller under contracts with El Paso, are required to obtain abandonment authorization. These arguments erroneously assume that Gulf-Warren have the right to make sales to El Paso of gas which is owned by Mineral Interest Owners. However, Gulf-Warren have no such right; upon the termination of Gulf's fixed term lease, it will have sold (and [392] El Paso will have bought) all the gas Gulf ever had the right to sell. Moreover, even if for technical reasons Gulf or Warren should be required to make some type of abandonment or rate schedule filing because of the termination of Gulf's fixed-term lease, these filings are unrelated to and have no effect on the right of Mineral Interest Owners to make sales of gas attributable to the mineral estate they will hold on termination of Gulf's lease on July 14, 1975.

Argument

A. Gas Attributable to the Mineral Estate of Mineral Interest Owners Has Not Been Dedicated to Interstate Commerce

1. *Staff*

Quite frankly, we have difficulty in following the rationale urged by Staff to support its argument that the gas attributable to the mineral estate of Mineral Interest Owners has been dedicated to interstate commerce.[11] Staff points out (Br. 6) that the gas attributable to Gulf's fixed-term leasehold interest was sold for resale to El Paso and, therefore, is dedicated to interstate commerce. Staff then contends (Br. 6) that Gulf has dedicated to El Paso gas attributable to the mineral estate of Mineral Interest Owners because (i) Gulf was restricted "neither as to the amount of gas which may be sold from the subject acreage nor as to the area from which gas may be produced on the subject acreage," and (ii) there is "no question" that Gulf "had authority to sell all the gas from the reserves within the fixed term of the lease" (Br. 6). The basic fallacy in [393] Staff's argument is that in *Gulf Oil Corp.* v. *Southland Royalty Co., supra,* the Texas Supreme Court held that Gulf only had a property right in and title to the volume of gas which could be found and produced from the subject acreage prior to July 14, 1975; therefore, Gulf was restricted both as to the

[11] Staff argues that "The gas produced from the subject acreage after lease expiration is dedicated to interstate commerce" (Br. 6). We assume that Staff necessarily does not intend to include any gas now being produced from such acreage and sold to intrastate purchaser(s).

amount of gas it could sell from the subject acreage and as to its authority to sell gas produced from such acreage. As of July 14, 1975, Gulf will have exhausted its property rights to any gas produced from the subject acreage and title to any remaining gas will vest in Mineral Interest Owners.[12] In essence, Staff's arguments boils down to nothing more than a contention that Gulf's contract with and sale of gas to El Paso had the effect of dedicating to El Paso gas attributable to the mineral estate of Mineral Interest Owners even though Mineral Interest Owners were not parties to the Gulf-El Paso gas contract and could not have prevented its execution, and even though Gulf never intended by such contract to sell to El Paso the gas attributable to the mineral estate of Mineral Interest Owners. In *Bass,* the Commission rejected rationale similar to that urged in this case by Staff stating:

> Neither party can be heard to say that the gas contract can function to impair the pre-existing title of Bass, who was not a party to the gas contract and who could not have prevented its execution. El Paso's rights to purchase gas from the James Ranch Well can rise no higher than Shell's to sell that gas, yet El Paso seeks that result by its claim that it is entitled to purchase Bass' gas until this Commission orders [394] otherwise. Shell obtained its working interest by lease assignment

[12] Even if it is assumed that Gulf had "authority to sell all the gas from the reserves within the fixed term of the lease" there is no evidence that Gulf exercised such authority. Indeed, as previously noted, in its initial brief Gulf expressly disclaims any intention "to dedicate the gas to El Paso which it (Gulf) will not own after expiration of the leases."

> from Bass. The Commission recognizes the legal requirement that when an assignment of a lease occurs, the successor steps '. . . into the shoes of his predecessor [and] takes the properties . . . subject to any benefits and infirmities inherent therein.' *Graridge Corp., et al.,* Opinion No. 408, 30 FPC 1156 at 1162. Shell took the James Ranch lease subject to the infirmity that it could not sell Bass' gas, or bind Bass to a gas sales contract. (48 F.P.C. at 1276)

Nor is there any validity to Staff's attempt to equate the present situation to "An artificial cut-off in time in the dedication of gas reserves to the interstate market in deference to the terms of a lease . . ." (Br. 6) As the Supreme Court of Texas held in *Gulf Oil Corp.* v. *Southland Royalty Co., supra,* there was nothing "artificial" about the limited property right which Gulf had in any gas produced from the subject acreage. Moreover, before there can be any cut-off in the dedication of gas reserves to the interstate market, there must first have been a dedication of such gas reserves to the interstate market. Thus, Staff's argument begs the controlling question to be decided by the Commission in this case, i.e., whether gas attributable to the mineral estate of Mineral Interest Owners has been dedicated to interstate commerce.

Likewise, Staff's reliance (Br. 7) on *Hunt* v. *FPC,* 306 F.2d 334 (5th Cir. 1962)[13] is misplaced. In *Hunt,* Judge Brown merely noted that when a producer voluntarily commences deliveries under a temporary cer-

[13] *Reversed on the other grounds* 376 U.S. 515 (1965).

tificate, it is irrevocably committing to interstate commerce the gas attributable to his leasehold interest until the underlying gas reserves are exhausted or until the Commission permits [395] abandonment pursuant to Section 7(b).[14] It would be sheer sophistry to claim that *Hunt* holds that whenever the owner of an undivided leasehold interest commences deliveries of gas attributable to his interest in interstate commence, the entire gas reserve, including the interests of other undivided interest owners, becomes dedicated to interstate commerce.

Apparently in desperation, the Staff conjures up a chamber of regulatory horrors which will occur unless the Commission holds that the gas attributable to the mineral estate of Mineral Interest Owners has been dedicated to interstate commerce. Thus, Staff states (Br. 7-8)

> "Limiting reserve dedication to the term of a lease would allow lessors to usurp the function of the Commission and frustrate the purpose of Section 7(b) by entering into short-term leases, leases terminable at will, and bilateral agreements with lessee-producers to agree to minimize production dedicated to interstate market until the lease expires at which time they may avail themselves of higher intrastate prices."

[14] Under the ordinary oil and gas lease a producer has the right to produce gas "down to the exhaustion of the reserve" i.e., so long as gas is produced in paying quantities. 3 WILLIAMS & MEYERS, OIL & GAS LAW § 601.4 (1962). However, in this case we are not dealing with the ordinary oil and gas lease but an "extremely rare" fixed term lease.

There is not one iota of evidence to support Staff's speculation. To the contrary, historical practice has shown that lessees are not willing to enter into term leases.[15] That is why such term leases are "extremely rare"[16] and "little [396] used."[17] Moreover, there certainly is no evidence that as to any existing fixed-term leases, particularly the fixed-term leases involved in this case, there are bilateral agreements under which the lessee-producer (Gulf) has minimized production dedicated to the interstate market until the lease expires so as to take advantage of higher intrastate prices. The clear and unequivocable evidence in this case shows that after July 14, 1975 Gulf will have no interest in the gas attributable to the mineral estate of Mineral Interest Owners. Under such circumstances, Gulf has every economic incentive to maximize production of gas from the subject acreage prior to July 14, 1975.

Proceeding from sheer speculation to mindreading, Staff finally argues (Br. 8) that when the subject fixed term lease was executed approximately 50 years ago on July 14, 1925, it was "considered likely in the minds of the original parties to the lease" that there would be no gas remaining at the end of the 50 year fixed term provided in the lease. While Mineral Interest Owners do not profess to know what is in the minds of other parties today, much less 50 years ago, we would speculate that the original parties to Gulf's lease did not know whether any gas would ever be found much

[15] See footnote 10 on page 4 of the Initial Brief of Mineral Interest Owners

[16] Staff Br. 8.

[17] El Paso Br. 21.

less whether there would be gas remaining at the end of the 50 year lease term. Nevertheless, we do know from this lease[18] that the parties provided that Gulf would only have a property right in and title to the gas which it could find and produce prior to July 14, 1975. Since Gulf never owned any gas produced from the subject acreage from and after July 14, 1975, Gulf clearly could not sell or dedicate such gas to El Paso and consequently El Paso acquired no right to purchase that which Gulf had no right to sell or dedicate.

[397] 2. *El Paso*

Mineral Interest Owners are also confused (if not mystified) by El Paso's arguments which, for the most part, are directed to the question of whether Gulf and Warren are required to obtain abandonment authorization. It is clear, however, that El Paso now takes the firm position that gas attributable to the mineral estate of Mineral Interest Owners is "bound" by Gulf's prior dedication of natural gas attributable to Gulf's leasehold interest.

It appears that the primary thrust of El Paso's argument is to classify Mineral Interest Owners as successors in interest to Gulf. However, there is no factual or legal foundation to support this classification because (a) the fee simple mineral estate which Mineral Interest Owners will hold on July 14, 1975 will not be obtained as a result of an assignment of Gulf's leasehold interest which will cease to exist at that time, (b) Mineral Interest Owners were not par-

[18] A copy of this lease is attached to El Paso's petition as Exhibit A.

ties to the Gulf-El Paso gas contract and could not have prevented its execution, and (c) Gulf took the fixed term lease subject to the infirmity that it could not sell any gas found and produced after July 14, 1975 and could not bind the owners of such gas to a gas sales contract. In short, as in *Bass,* El Paso seeks in this case to acquire the right to purchase gas which Gulf had no right to sell. The infirmities in El Paso's arguments were clearly revealed by the Commission in *Bass* and need not be repeated.

To further support its position, El Paso argues that the dedication of natural gas to interstate commerce is *in rem* rather than *in personam* (Br. 14). Assuming El Paso's argument is correct, it does not support the results it seeks. Here the *"rem"* was gas attributable to Gulf's leasehold interest i.e. gas which could be found and produced prior to July 14, 1975. Gulf could not and did not sell or dedicate anything more than this *"rem."* Prior to July 14, 1975, all of this "rem" will have been delivered to interstate commerce and thus Gulf's dedication will be fulfilled.

[398] 3. *California*

California does little more than reiterate in summary form the arguments made by Staff and El Paso. For example, California relies upon the physical movement of gas in El Paso's pipeline to support a claim of dedication of gas attributable to the mineral estate of Mineral Interest Owners. However, this claim is clearly without merit because there has been no physical movement of any such gas. Indeed, since the right of such Mineral Interest Owners to market any gas attributable to their mineral estate will not even come into be-

ing until July 14, 1975, no gas attributable to such mineral estate could have been previously delivered by Gulf.

California's reliance on *Sunray Mid-Continent Oil Co.*, 364 U.S. 137 (1960) is equally misplaced. In that case, the Supreme Court held once dedicated to interstate commerce, gas reserves may not be removed from interstate commerce without abandonment authorization. But the question to be decided in this case is whether gas attributable to the mineral estate of Mineral Interest Owners has ever been dedicated to interstate commerce.

In conclusion California presents what is perhaps the most puzzling of all arguments urged by El Paso *et al.* First, California impliedly recognizes that under the D.C. Circuit's decision in *Mobil,* the Commission has no jurisdiction over gas attributable to the mineral estate which Mineral Interest Owners will hold on July 14, 1975 (Br. 5-6). Then after referring to the Supreme Court's decision in *Sunray*[19] and *Lo-Vaca*[20] and "the current natural gas situation" California argues that "both law and public [399] policy dictate that the *Mobil* case should not be applied." (Br. 6) However, if the Commission should still feel bound to follow *Mobil,* California claims that as in the *Rayne Field* case[21] "the agreements involved in the instant proceeding are such that they are very close in economic effect to conventional sales of natural gas." (Br. 6)

[19] *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965).

[20] *Sunray Mid-Continent Oil Company* v. *FPC, supra.*

[21] *U.G.I.* v. *Continental Oil Co.*, 381 U.S. 392 (1965).

California concludes then that Mineral Interest Owners "are better categorized as royalty owners engaged in the sale of natural gas in interstate commerce for resale, and therefore come within the purview (of) Section 1(b) of the Natural Gas Act." (Br. 6)

The defects in this amazing argument are readily apparent. First, we fail to perceive how "the current natural gas situation" or the Supreme Court's decisions in *Lo-Vaca* and *Sunray* dictate in any way that the D.C. Circuit's decision in *Mobil* should be disregarded in this case. Moreover, we fail to understand what "agreements" in this case are "very close in economic effect to conventional sales of natural gas." Judge Levanthal made it crystal clear in *Mobil* that as royalty owners under the fixed term lease held by Gulf, Mineral Interest Owners cannot be considered sellers of gas.[22] On the other hand, if California is referring to the gas contract between El Paso and Gulf, its argument is without merit because Mineral Interest Owners were not parties to that contract, could not have prevented its execution and, according to Gulf, such contract was never intended to cover the gas attributable to the mineral estate of Mineral Interest Owners.

[22] Thus, Judge Leventhal stated (463 F.2d at 262):

> To refer to the royalty owner as engaging in the sale is to depart from the common understanding of the words used, industry parlance, economic equivalent, or any other foundation hitherto considered a source for discerning Congressional intention.

[400] **B. The Attempts Of El Paso Et Al To Distinguish Bass Are Without Merit**

El Paso *et al* recognizes that if the principles enunciated in *Bass* are applied in this case, there can be no doubt that the Commission has no jurisdiction over gas attributable to the mineral estate of Mineral Interest Owners and on July 14, 1975 they will be free to sell such gas to the purchaser of their choice without obtaining any type of prior permission or authority from the Commission.

Accordingly, Staff argues (Br. 9-10) that "*Bass* can hardly be said to be controlling over the instant questions" because in *Bass* the gas was sold to another interstate pipeline while in this case Mineral Interest Owners propose to sell their gas to an intrastate pipeline. El Paso and California also seek to distinguish *Bass* on this basis."[23] The short answer to these attempts to distinguish *Bass* is that it is clear that the Commission's decision in that case was not based upon whether the purchaser to whom Bass sold his gas was an interstate or intrastate pipeline. Instead, the issue was whether gas attributable to Bass' interest had been dedicated to El Paso by Shell. Having found that the gas was not dedicated to El Paso the Commission had no authority to compel Bass to sell gas attributable to its interest to a particular purchaser.[24] Thus, the ultimate destination of the gas to be sold by Bass was necessarily irrelevant to the Commission's decision.

[23] El Paso Br. 17; California Br. 4.

[24] *See F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 17 (1961), in which the Supreme Court held that "The Commission cannot order a natural gas company to sell gas to users that it favors."

Nor can *Bass* be distinguished from the present case on the ground that Bass' interest in the gas was obtained under a farm-out agreement while the mineral estate of Mineral [401] Interest Owners will come into being upon the termination of Gulf's fixed term lease on July 14, 1975. We fail to see how this difference in the means by which the respective parties obtain their interest can be used to avoid application of the principles enunciated in *Bass* to the present case. Indeed, the mineral estate of Mineral Interest Owners, unlike the working interest obtained by Bass pursuant to its farm-out agreement option, will not be created out of the lease under which sales of gas to El Paso are being made. Since Mineral Interest Owners have no present or future interest in Gulf's fixed term lease, they are even further removed from the gas sales made by Gulf to El Paso than was Bass. Therefore, from the standpoint of dedication, Mineral Interest Owners occupy a stronger position than Bass did.

Staff also argues that its position in this case can be reconciled with *Bass* because Shell lacked authority to sell the gas reserves attributable to Bass' potential working interest[25] whereas in the present case Gulf had "the authority from the outset to sell all the gas from the subject reserves, and, therefore, all the gas was dedicated to El Paso." (Br. 10). To further support

[25] In this connection, Staff alleges (Br. 10) that ". . . it was likely not within the contemplation of Bass and Shell that Bass' proportionate working interest share of gas would be dedicated by Shell." (Br. 10). Staff's speculation is directly contrary to the order on rehearing in *Blair-Vreeland* where the Commission in elaborating on *Bass* agreed that Shell had attempted to dedicate Bass' gas to El Paso but could not do so because such gas was never owned by Shell (Opn. 724-A at p. 4).

this argument, Staff reiterates its claim that when Gulf's 50-year fixed term lease was executed it was "likely not within the contemplation of the parties to the lease(s) that any commercial amounts of gas remain after lease exploration" (Br. 10).

[402] We have already pointed out in some detail that contrary to Staff, Gulf has no authority to sell any gas which cannot be found and produced prior to July 14, 1975. Likewise, we have discussed the lack of factual support or logic for Staff's clairvoyant claim as to what was in the contemplation of parties 50 years ago.

Despite Staff's protestations and speculations to the contrary, there simply is no way to reconcile Staff's position in this case with the principles enunciated by the Commission in *Bass*. In both cases, El Paso has sought to alter the basic property rights of mineral owners by claiming they were required to obtain abandonment authorization under Section 7(b) before they could make sales of natural gas attributable to their mineral interest. Similarly, in both cases the thrust of the arguments presented has been that El Paso in some manner acquired a right to purchase gas attributable to the interests of such mineral owners which the lessee had no right to sell—and in this case had not attempted to sell. Therefore, the Commission's rationale in *Bass* is clearly applicable to this case and leaves no doubt that Mineral Interest Owners are not required to obtain abandonment authorization under Section 7(b) prior to commencing sales of gas attributable to the mineral estate they will hold when Gulf's lease terminates on July 14, 1975.

[403] CONCLUSION

For the foregoing reasons, and those set forth in their Initial Brief, Mineral Interest Owners respectfully submit that the arguments and positions submitted by El Paso *et al* are without merit and that upon consideration of the briefs filed herein, the Commission should find and declare that Mineral Interest Owners are not required to obtain any prior Commission authorization in order to commence sales of gas attributable to the mineral estate they will hold upon termination of Gulf's lease on July 14, 1975.

Respectfully submitted,

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June 24, 1975

[404] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[405] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Reply Brief of Phillips Petroleum Company

Phillips Petroleum Company (Phillips) hereby files its Reply Brief in these proceedings pursuant to Section 1.29 of the Federal Power Commission (Commission) Rules of Practice and Procedure.

As set forth in the statements of the case contained in the initial briefs filed in this proceeding, Gulf Oil Corporation (Gulf) is currently making percentage sales of casinghead gas from its Ector County leasehold to Phillips. The residue gas remaining from the processing of such gas represents a portion of the volumes of residue gas sold at the tailgate of Phillips' Goldsmith Plant to El Paso Natural Gas Company (El Paso) under rate schedules of Phillips Petroleum Company on file with the Commission.

In its initial brief filed herein, El Paso asserts that Phillips may not reduce the volume of deliveries under the surplus residue gas contract without obtaining abandonment authorization from the Commission. By implication, if not expressly so, the Public Utilities Commission of the State of California (CPUC) makes the same assertion.

The arguments of El Paso and CPUC are inapposite to a plant operator such as Phillips purchasing gas under percentage of proceeds contract.

In all the cases cited by El Paso requiring continuation of service even by an "unwilling" seller, the seller has been "able" to continue service. This is not so in the case of Phillips in the instant situation. When the percentage of proceeds contract under which Phillips purchases gas terminates, Phillips will be as unable to [406] continue deliveries to El Paso of that gas as if the reservoir were depleted. That is the very nature of the plant operator's business and, we submit, is an explanation of why the Commission in Section 154.91(e) of its Regulations requires only that the plant operator-purchaser file an annual report of its percentage type purchasers. It is a clear recognition of the business of purchasing gas when and as available, processing it and reselling the residue. It involves gathering systems behind the plant which enable a plant operator to acquire small quantities, single leases, single wells, etc. with the knowledge that some will always be ending. To require a plant operator like Phillips selling under a *surplus* residue contract to obtain abandonment anytime any of those single sources ceases is not only impractical and illogical, it would be disruptive of the processing business which supplies the natural gas liquids needed as badly by the American consumer as natural gas is.

Phillips submits that under the Natural Gas Act and in particular Section 154.91(e) of the Regulations thereof, its only obligation as the operator of a processing plant purchasing gas from a producer at a price which is a percentage of the proceeds from the resale

of the residue gas is to include in its annual report required by such regulation a statement listing the ". . . changes in the producers from whom the gas is purchased or in the percentum they receive."

As to the question of the necessity of producers' obtaining abandonment authorizations under the particular facts of these cases, Phillips adopts and incorporates herein the arguments contained in the Initial Brief of Texaco Inc. filed herein.

Wherefore, Phillips submits that the question raised by El Paso as to whether Phillips can without prior [407] Commission authorization reduce its sales of surplus residue natural gas to El Paso to the extent of such residue as is attributable to the Gulf lease be answered in the negative.

Respectfully submitted,

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[408] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

IN THE MATTERS OF

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(RECEIVED JUNE 27, 1975)

Reply Brief of Texaco Inc.

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[409] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

IN THE MATTERS OF

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Reply Brief of Texaco Inc.

Texaco Inc. (Texaco) hereby files its reply brief in these proceedings pursuant to the Commission's "Notice of Revision of Briefing Schedule" issued June 13, 1975.

I.

INTRODUCTION

The initial briefs of Staff, El Paso Natural Gas Company (El Paso), People of the State of California, *et al.* (California), and Mitchell Energy Corporation (Mitchell) attempt to show that the reversionary owners in these proceedings will be required by the Natural Gas Act to obtain abandonment authorization from the Commission before making any disposition of their gas other than selling it to El Paso. These parties appear to be unaware of the reversionary interest owners' rights arising out of the Fifth Amendment and Tenth Amendment to the United States Constitution, which rights were discussed in Texaco's initial brief and will not be belabored herein. The object of

this brief is to point out only a few of the many fallacious arguments raised by the four above-named parties, for most of such arguments are without merit on their face.

II.

ARGUMENT

[410] Staff (Br. p.7) refers to cases holding that contract expiration and producer succession cannot "impede the continued interstate flow of gas once dedicated." Where one producer assigns his leasehold property rights to another producer, and gas attributable to that valid and existing leasehold property interest has been committed to interstate use, Texaco would agree that abandonment is required before another disposition of the gas can be made. However, the cases cited by Staff are clearly inapplicable to the present situation, for they do not involve termination of a lease, which extinguishes the underlying property right to the gas production. For example, Staff's reliance upon *Hunt* v. *F.P.C.*[1] is misplaced, for that case in no way involved the question of dedication *vel non*. It dealt only with the question of whether the Commission, "when granting an application for a temporary certificate authorizing the sale of natural gas in interstate commerce, can impose a condition that the applicant shall not increase its certificated price pending a hearing on the applicant's petition for permanent authority" (376 U.S. 515). The U.S. Court of Appeals for the Fifth Circuit had stated:

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[1] *Hunt* v. *F.P.C.*, 306 F.2d 334 (5th Cir. 1962), reversed, 376 U.S. 515 (1964).

"The consequences are too awesome for us to assume that Congress ever committed such undefinable legislative judgments to a legislative agency. There is, first, the status of the producer under a temporary. His rights may be temporary, but his duties are not, or at least on the present holding they are not. Like the ancient covenant running with the land, the duty to continue to deliver and sell flows with the gas from the moment of first delivery down to the exhaustion of the reserve, or until the Commission on appropriate terms, permits cessation of service under § 7(b), 15 U.S.C.A. § 717f(b)." (306 F.2d at 342)

[411] It can readily be seen that the language about "covenant running with the land" is pure dicta and has nothing to do with the present case when read in context. Furthermore, it should be noted that Staff has cited no U.S. Supreme Court case or any other case supporting the position it advocates. This position is contrary to the holdings in *Erie Railroad Company* v. *Tompkins,* 304 U.S. 64 (1938) and *Sunderland* v. *United States,* 266 U.S. 266 (1924), as demonstrated in Texaco's initial brief in these proceedings. If Staff's arguments prevailed, the result would be federal common law applying to realty, which would bring about the chaos warned against at pages 5 and 6 of Texaco's initial brief. Texaco's position in the present case is that the owner of an estate for years (Gulf) cannot create a covenant running with the land which would extend beyond the estate itself. This is basic to all acceptable concepts of real property law.

Staff (Br. pp. 7-8) voices a fear that certain parties may try to circumvent the Natural Gas Act by enter-

ing into short-term leases and leases terminable at will, but such fear is imaginary. No prospective lessee in modern times will agree to such a lease under ordinary circumstances, for it would be a very imprudent business practice to give up one's lease on a property while it is still highly productive. Virtually all modern-day leases specify that they will continue in effect as long as production lasts. In fact, this very case, arising out of a fixed term lease executed by Gulf illustrates the hazards, from a lessee's point of view, in entering into the types of leases which Staff fears. The termination of a lease on property that is still highly productive is anything but beneficial financially to the lessee, as can be seen by looking at the effect of such termination upon Gulf in the instant situation. Further, the rarity of this type of occurrence is demonstrated by the fact that no direct case law exists on this point. It would be totally unrealistic to expect any increase in leases short in term, or terminable at will, to result from whatever holding is made in this case.

[412] The brief of Mitchell demonstrates an apparent failure to understand the issue in these proceedings, for it even fails to recognize that there is no precedent on the question presented. In contrast, the brief of Staff begins by stating, "This case involves a legal question of first impression before the Commission." Mitchell seems unaware of the difference between termination of a lease, and the coexisting evaporation of the underlying property rights to oil and gas production as contrasted with the mere assignment of an ongoing property interest, for it erroneously indicates that the Commission's Opinion No. 733 (Docket No. CI75-296) has

some bearing on the pertinent case. This premise is false, because the lessee in Docket No. CI75-296 (Mitchell) was an ordinary assignee of Gray Wolfe, Inc. As established by the Commission in *Cumberland Natural Gas Company,* 34 F.P.C. 132 (1965) such an assignee must continue selling production to the same interstate purchaser when the reserves have already been committed to interstate commerce.

Staff, Mitchell, El Paso and California are mistaken in arguing that the reversionary owners in this case will be in any way bound to sell their gas to El Paso upon expiration of the leases in Crane and Ector Counties. The reserves underlying those leases could not have been committed by Gulf Oil Corporation (Gulf) to a greater extend than Gulf's legal property interest in those reserves. Upon expiration of Gulf's leases, this property interest expires, and the reversionary interest owners cannot rightfully be bound in any way to sell to El Paso, for the Natural Gas Act does not attach to the land itself. Such a result would violate the above-mentioned holding in *Erie Railroad Company* v. *Tompkins* as well as the Fifth Amendment and Tenth Amendment to the United States Constitution.

For the reasons stated herein, together with those set forth in Texaco's initial brief, the Commission should hold that no party need obtain abandonment upon the expiration of Gulf's leases in Crane and Ector Counties, [413] Texas, regardless of what disposition the reversionary interest owners make of their gas.

Respectfully submitted,

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[414] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

[415] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

(RECEIVED JUNE 25, 1975)

Answer of Southwest Gas Corporation in Support of El Paso Natural Gas Company Brief

Southwest Gas Corporation ("Southwest"), pursuant to Section 1.12 of the Federal Power Commission's ("FPC") Rules of Practice and Procedure, respectfully files this Answer in support of the brief filed by El Paso Natural Gas Company ("El Paso") in the above-referenced docket.

In its brief, El Paso supports the following contentions:

1) Gulf, *et al.* may not terminate their sale of natural gas without obtaining abandonment authorization;

2) Warren and Phillips may not reduce their sales in interstate commerce without prior Commission abandonment authorization; and

3) Southland, *et al.* must obtain abandonment authorization in order to discontinue sales.

Southwest supports in full the arguments of El Paso on the above issues and urges that the public interest requires that abandonment authorization be obtained from the FPC before sales to El Paso may be terminated.

[416] WHEREFORE, Southwest Gas Corporation respectfully urges the Commission to give great weight

to El Paso Natural Gas Company's Brief and to grant El Paso's Petition for Declaratory Order.

Respectfully submitted,

SOUTHWEST GAS CORPORATION

/s/ By R. L. MUIRHEAD
R. L. Muirhead

Vice President/Regulatory Affairs

Dated: June 23, 1975

[417] (VERIFICATION OMITTED IN PRINTING)

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[418] (CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[419] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(FILED JULY 2, 1975)

Motion of Exxon Corporation for Inclusion of Protective Order

Pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure, Exxon Corporation hereby requests that the Commission include protective relief in any final order issued in these proceedings. In support whereof Exxon shows as follows:

I

These proceedings involve petitions of El Paso Natural Gas Company and Texaco Inc. wherein the central question is whether deliveries of natural gas by Gulf Oil Corporation, a lessee under a 50-year lease, dedicated all gas produced from the property, including gas which may be produced after expiration of the lease. Conversely, the question presented by El Paso is whether the mineral interest owners, Southland Royalty Company, *et al.*, and Exxon Corporation (herein referred to collectively as mineral interest owners) are required to obtain abandonment authorization at the expiration of the lease to Gulf if they sell production from their mineral interest to another market. Addi-

tionally, El Paso raises a question whether Gulf should be required to obtain abandonment authorization.

The lease to Gulf is due to expire on July 14, 1975.[1] Whether the Commission acts before July 14, 1975, or thereafter, the Commission action may impose obligations upon a party which will result in irreparable injury to that party if the Commission order should be reversed upon court review. This can be illustrated by considering the effect [420] of alternative Commission actions. For example,

(1) Assume that the Commission holds that no abandonment authority is required of the mineral interest owners. In such a case, the mineral interest owners would be free to sell their gas in intrastate commerce as of July 15, 1975. If El Paso, or an intervenor favoring El Paso's position, sould seek review and obtain reversal of the Commission's decision, such a party may desire protection pending judicial review, probably in the form of some pay-back provision. This could take the form of a protective order requiring the mineral interest owners to pay back the volumes sold to another market pending review, if it should be finally determined that El Paso were entitled to the gas.

(2) In the alternative, assume that abandonment authority is required of the mineral interest owners. In such a case, the mineral interest owners would

[1] The lease to Gulf from Texaco is due to expire in August, 1975. Because of the imminence of the July 14, 1975, expiration date of the lease from the mineral interest owners, the need for a protective order is urgent with regard to the petition of El Paso in Docket No. CP75-209.

not be free to sell their gas in intrastate commerce as of July 15, 1975, and would seek review. Pending review they would need affirmative assurance that if, upon review, the Commission's order should be overturned (a) any deliveries of gas made to El Paso after July 14, 1975, pursuant to the Commission's order would not constitute dedication of their gas to the interstate market; and (b) that El Paso would pay back the volumes delivered under circumstances that the pay-back volumes would not be considered jurisdictional gas and would not constitute the mineral interest owners, or any of their customers, subject to Commission jurisdiction by reason of the sale or transportation thereof.

The need for relief would be immediate, particularly in connection with the question whether deliveries by the mineral interest owners to El Paso would dedicate their gas to the interstate market. In the normal course, parties would be left to seek protective relief in the form of a stay, first to the Commission and then, possibly, to the courts. However, in this case since the gas is casinghead gas, production must continue. It would not be desirable to shut in production pending action upon a request for stay since such action would result in interruption of oil and gas production and possible permanent damage to the wells. If the Commission [421] should require that the gas be delivered to El Paso after July 14, 1975, the mineral interest owners would be entitled to a determination, prior to July 15, that involuntary deliveries to El Paso would not dedicate the gas to the interstate market, pending the ultimate outcome of judicial review. In view of

present time constraints, delay in action upon a request for stay until after issuance of the Commission order on the merits could not provide adequate protection to the mineral interest owners. Similarly, if the mineral interest owners are held to be free to sell their gas to any market, El Paso may desire immediate relief in the form of a pay-back requirement.

To avoid these problems and to avoid the numerous pleadings in various jurisdictions which would result from requests for protective relief, the parties hereto request that the Commission incorporate in its final order in this proceeding language which protects all parties pending ultimate judicial review. To this end the parties suggest the following language:

(A) If answers to the El Paso questions are determined in the negative, *i.e.* that no abandonment authorization is required of the mineral interest owners, the following language should be included in the Commission's order:

> "If Southland, Exxon, and the other mineral interest owners should determine not to make sales of their production to El Paso and should El Paso or any other party decide to seek court review of this order, and if the Commission's determination herein should be reversed upon review and the gas be held to have been dedicated to El Paso, then Southland, Exxon, and the other mineral interest owners shall be required to repay to El Paso volumes of gas, in an equitable manner over a reasonable period of time, equal to those which should have been delivered to El Paso

from the subject properties from July 15, 1975, until the date deliveries to El Paso are required to commence pursuant to final order no longer subject to review."

(B) If the answers to El Paso's questions are determined in the positive, *i.e.* that abandonment authorization is required of the mineral interest owners, then the following language should be included in any Commission order:

[422] "If Southland, Exxon, or other mineral interest owners should seek review of this order and upon review it should be ultimately determined that the gas may be sold to others than El Paso without abandonment authority, then any deliveries by Southland, Exxon, or the other mineral interest owners pending such judicial review shall not have constituted a dedication of their gas to the interstate market and acceptance of monies paid for gas delivered pending judicial review shall not prejudice the rights of the mineral interest owners to claims for any rate different from the rate tendered by El Paso or other rights in the premises; further, El Paso shall be required to repay Southland, Exxon, and the other mineral interest owners in gas for the deliveries made to it pending judicial review. Such repayment is to be made by El Paso subject to the following conditions: (a) the pay-back volumes are to be delivered in an equitable manner over a reasonable period of time (b) Southland, Exxon, and the other

mineral interest owners shall return to El Paso the monies paid for deliveries made pending judicial review, and (c) the pay-back volumes shall not be considered to be jurisdictional gas and acceptance thereof by Southland, Exxon, or the other mineral interest owners, or any of their customers, shall not subject any of them to Commission jurisdiction."

Submittal of this motion for a protective order is without prejudice to the rights of Exxon as to any substantive issues in the case. Exxon requests such additional relief as may be appropriate in the premises.

Respectfully submitted,

EXXON CORPORATION

By /s/ SHERMAN S. POLAND
Sherman S. Poland
ROSS, MARSH & FOSTER
730-15th Street, N.W.
Washington, D.C. 20005
Its Attorneys

July 2, 1975.

[423] (AFFIDAVIT OMITTED IN PRINTING)

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[424]

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July 3, 1975

Mr. Kenneth F. Plumb
Secretary
Federal Power Commission
825 N. Capitol Street, N. E.
Washington, D. C. 20426

(FILED JULY 3, 1975)

Re: *El Paso Natural Gas Company,*
Docket Nos. CP75-209, *et al.*

Dear Mr. Plumb:

On July 2, 1975, Exxon Corporation filed its motion for inclusion of protective order in the above-captioned proceeding. In that motion, Exxon suggested that to avoid the potential irreparable injury, confusion and requests for judicial intervention which could result from subsequent reversal on the merits of a Commission decision in this proceeding, the Commission should incorporate in its final order language which would protect the interests of all patries pending completion of judicial review on the merits of the controversy herein.

Under Exxon's proposal, specific provision would be made for payback of volumes over a reasonable

period of time in the event that during the appellate process gas was delivered to a party eventually determined to have no right to receive the gas. Delivery of such payback volumes would not be considered a jurisdictional transpotration or sale and would not subject the receiving party to Commission jurisdiction. Also, Exxon requested that the Commission provide that neither delivery of gas pending appeal nor receipt of monies paid therefor would constitute dedication of gas to interstate commerce. Exxon's request for such [425] protective order was made without prejudice to its rights as to any substantive issues in this proceeding.

Mineral Interest Owners concur in Exxon's suggestion that the Commission should include in any order issued herein language which will protect all parties in the event that the Commission's determination on the merits of the controversy is reversed on appeal. Mineral Interest Owners' support of Exxon's motion is, of course, offered without prejudice to its rights as to any substantive issues in this proceeding.

Nevertheless, Mineral Interest Owners wish to make it clear that their support of Exxon's motion is predicated on the Commission's issuing an order prior to July 14, 1975 and upon the Commission's acceptance of the substantive aspects of Exxon's proposal. Thus, Mineral Interest Owners' concurrence should not be construed as a waiver of their rights to seek such stays, injunctions or other relief from this Commission or an appropriate court, which they may deem necessary in the event that the Commission does not issue an order in this proceeding prior to the expiration of the 50-year fixed term lease on July 14, 1975 or in an order

issued prior to that date does not provide protective language protecting sufficiently the interests of Mineral Interest Owners.

Mineral Interest Owners' support of Exxon's motion is further predicated on their understanding that the payback provisions of the protective language would not be activated until the issuance by an appellate court of a final nonappealable order resolving the issue of whether the gas involved in the controversy herein is dedicated to interstate commerce. Consequently, the payback obligation would not be triggered by appellate reversal of the Commission's decision for reasons not involving the merits of the case.

[426] Copies of this letter are being served on all parties to this proceeding.

Respectfully submitted,

J. EVANS ATTWELL
One of Counsel for
Mineral Interest Owners

PWD/jed
cc: All parties

[427]

RECEIVED JULY 9, 1975

FEDPWRCOMM WSH
GOCGUL WPC TUL
7-7-75
HON KENNETH F PLUMB
SECRETARY
FEDERAL POWER COMMISSION
825 NORTH CAPITOL ST
WASH DC

GULF OIL CORPORATION SUPPORTS THE "MOTION OF EXXON CORPORATION FOR INCLUSION OF PROTECTIVE ORDER" IN ANY ORDER ISSUEDDIN EL PASO NATURAL GAS COMPANY, DOCKET NO. CP75-209. A COPY OF THIS TELEGRAM HAS BEEN MAILED ON THIS DATE TO ALL PARTIES ON THE SERVICE LIST.

WARREN M SPARKS
ATTORNEY FOR GULF OIL CORPORATION TULSA OK
CORR TEXT LINE 2 LAST TWO WORDS ISSUED IN
GOCGUL WPC TUL
FEDPWRCOMM WSH

[428] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(FILED JULY 10, 1975)

Answer of El Paso Natural Gas Company To Motion of Exxon Corporation For Inclusion of Protective Order

Pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure, EL PASO NATURAL GAS COMPANY ("El Paso") respectfully submits this answer to the pleading filed by Exxon Corporation ("Exxon") in the above-styled dockets on July 2, 1975 styled "Motion of Exxon Corporation for Inclusion of Protective Order". In support hereof, El Paso avers as follows:

I.

Docket No. CP75-209 involves a petition filed by El Paso for issuance of a declaratory order resolving the questions (1) whether Gulf Oil Corporation and other lessees who have been selling natural gas to El Paso produced from a certain 50-year fixed term lease which will terminate on July 14, 1975, involving property in Crane County, Texas must obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act and Section 154.91 of the Commission's Regulations under said Act in order to cease

such sales to El Paso, (2) whether Exxon Corporation, Southland Royalty Company and other reversionary interests may, without prior Commission authorization, divert natural gas from its present movement in interstate commerce to delivery and sale in intrastate commerce and (3) whether, without prior Commission authorization, Warren Petroleum Corporation may reduce its sales in interstate commerce of residue natural gas to El Paso, the present level of which is attributable in part to production from the said 50-year fixed term lease.

Docket No. CI75-594 involves a petition filed by Texaco Inc. ("Texaco") seeking issuance of a declaratory order involving a lease similar in terms covering property located in Ector County, Texas which will terminate on August 7, 1975. The issue as described by Texaco is whether a lessee, by making an interstate gas sale, can commit more than its real property interest (*i.e.*, its rights under its lease), thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations under Section 7 of the Natural Gas Act.

[429] II.

El Paso concurs with Exxon's conclusion as to the need for incorporation by the Commission in its final order in this proceeding of language which protects all parties pending ultimate judicial review of the questions here involved. However, since payback of gas either to or by El Paso will affect directly El Paso's level of service to the interstate market, El Paso believes the language set forth at pages 3 and 4 of Exxon's motion should be amended to read as follows

(additional language suggested by El Paso is underscored):

"(A) If answers to the El Paso questions are determined in the negative, *i.e.*, that no abandonment authorization is required of the mineral interest owners, the following language should be included in the Commission's order:

'If Southland, Exxon, and the other mineral interest owners should determine not to make sales of their production to El Paso and should El Paso or any other party decide to seek court review of this order, and if the Commission's determination herein should be reversed upon review and the gas be held to have been dedicated to El Paso, then Southland, Exxon, and the other mineral interest owners shall be required to repay to El Paso, *subject to further Commission order,* volumes of gas, in an equitable manner over a reasonable period of time, equal to those which should have been delivered to El Paso from the subject properties from July 15, 1975, until the date deliveries to El Paso are required to commence pursuant to final order no longer subject to review.'

"(B) If the answers to El Paso's questions are determined in the positive, *i.e.*, that abandonment authorization is required of the mineral interest owners, then the following language should be included in any Commission order:

'If Southland, Exxon, or other mineral interest owners should seek review of this order

and upon review it should be ultimately determined that the gas may be sold to others than El Paso without abandonment atuhority, then any deliveries by Southland, Exxon, or the other mineral [430] interest owners pending such judicial review shall not have constituted a dedication of their gas to the interstate market and acceptance of monies paid for gas delivered pending judicial review shall not prejudice the rights of the mineral interest owners to claims for any rate different from the rate tendered by El Paso or other rights in the premises; further, El Paso shall be required to repay Southland, Exxon, and the other mineral interest owners in gas for the deliveries made to it pending judicial review. Such repayment is to be made by El Paso subject to the following conditions: (a) the pay-back volumes are to be delivered, *subject to further Commission order,* in an equitable manner over a reasonable period of time, (b) Southland, Exxon, and the other mineral interest owners shall return to El Paso the monies paid for deliveries made pending judicial review, and (c) the pay-back volumes shall not be considered to be jurisdictional gas and acceptance thereof by Southland, Exxon, or the other mineral interest owners, or any of their customers, shall not subject any of them to Commission jurisdiction.'"

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

By /s/ C. FRANK REIFSNYDER
C. Frank Reifsnyder
One of Counsel

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[431]
C. FRANK REIFSNYDER
HOGAN & HARTSON
815 Connecticut Avenue
Washington, D. C. 20006

Counsel for

EL PASO NATURAL GAS COMPANY

Dated: July 10, 1975

[432] (VERIFICATION OMITTED IN PRINTING)

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[433]

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[434] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. CP75-209, *et al.*

EL PASO NATURAL GAS COMPANY, *et al.*

FILED JULY 11, 1975

Response of Exxon Corporation To Answer of El Paso Natural Gas Company To Exxon's Motion for Inclusion of Protective Order

Exxon Corporation (Exxon) submits this response to the answer filed by El Paso Natural Gas Company (El Paso) the afternoon of July 10, 1975, to Exxon's motion for inclusion of a protective order in the above-captioned proceedings. Exxon recognizes that the Commission's rules do not expressly provide for the filing of responses to answers to motions. However, because of the substantial substantive change which El Paso has suggested to Exxon's originally proposed protective order, Exxon requests leave to file the instant response. In support whereof Exxon shows as follows:

I

In its motion filed July 2, 1975, Exxon requested that the Commission include certain alternative protective provisions in any final order which the Commission issued in these proceedings. Such protective provisions were designated to avoid prejudice to any party by complying with the holding of the Commission's order while perfecting its right of appeal of such order. Taking first the situation where the Commission's order would hold that Exxon is not required to deliver its gas to El Paso, the suggested protective

provision provided that Exxon would return to El Paso gas volumes equivalent to those delivered to Intratex during appeal should El Paso obtain a reversal of the Commission's order upon conclusion of judicial review. On the other hand, should the Commission's order hold that Exxon is required to deliver its gas to El Paso, the suggested protective provision provided that El Paso would return to Exxon gas volumes equivalent to those delivered to it by Exxon during appeal should Exxon obtain a reversal of the Commission's order upon conclusion of judicial review.

[435] By its July 10, 1975, answer to Exxon's motion, El Paso proposes to change the requirement that gas will be repaid if the Commission's order is reversed from a positive requirement to a contingent requirement. It accomplishes this by making the payback obligation "subject to further Commission order." Such proposed modification makes the protective provisions totally illusory. If there were no protective provision whatsoever and a party prevailed in obtaining a reversal of the Commission's order, that party could request the Commission to require a payback of the other party and such payback would be "subject to further Commission order." The significant fact is that, at that time, the party requesting payback would have already been injured by delivering or foregoing deliveries of gas and its remedy for such injury would be contingent rather than definite.

II

WHEREFORE, Exxon requests that the Commission deny the modification to the protective provisions proposed by El Paso.

Respectfully submitted,

EXXON CORPORATION

By /s/ BERNARD A. FOSTER, III
SHERMAN S. POLAND
BERNARD A. FOSTER, III

ROSS, MARSH & FOSTER
730 - 15th Street, N.W.
Washington, D.C. 20005

Its Attorneys

Dated at Washington, D. C.,
this 11th day of July, 1975.

[436] (AFFIDAVIT OMITTED IN PRINTING)

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[437] ROSS, MARSH & FOSTER

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

OPINION No. 737

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(ISSUED: JULY 11, 1975)

Declaratory Opinion and Order on Termination of Long-Term Leases

[438] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman; William L. Springer, and Don S. Smith.

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

OPINION NO. 737

(Issued July 11, 1975)

Declaratory Opinion and Order on Termination of Long-Term Leases

PER CURIAM.

El Paso Natural Gas Company on January 20, 1975, filed in Docket No. CP75-209 a petition for a declaratory order with respect to a 50-year fixed term lease currently held by Gulf Oil Corporation and others (Gulf, *et al.*) which will expire on July 14, 1975. By the terms of the lease Gulf obtained the exclusive right to produce and sell oil and gas from 45,771 acres of land in Crane County, Texas. When the lease expires, the mineral rights will revert to the mineral interest owners (Southland, *et al.*)[1]

[1] Originally the lease was executed with W. N. Waddell, *et al.* as lessors. Present owners include Southland Royalty Company 47.00%, Trustees under the will of Warren Wright 25.7%, Exxon Corporation 14%, and more than 100 others.

Gulf, *et al.* make percentage type sales to Warren Petroleum Company, now a division of Gulf covering certain quantities of casinghead gas produced from the Crane County acreage. Pursuant to two gas purchase contracts, dated January 26, 1951, and March 1, 1972, Warren sells to El Paso approximately 60,000 Mcf per day of surplus residue gas at the outlet of the Waddell Gasoline Plant, and El Paso transports [439] this gas through its jurisdictional facilities for subsequent resale in interstate commerce. Approximately 25,000 Mcf per day of this residue gas comes from wells leased by Gulf, *et al.*

Upon termination of the lease the owners of the mineral interests will hold a fee simple title as reversioners to their pro rata share of the mineral estate underlying the subject acreage. *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 SW2d 547, 522 Tex. Sup. Ct. 1973 (1973). The mineral interest owners state that they have agreed to sell to Intratex Gas Company the gas from their fee simple estate. Furthermore El Paso says that Exxon has solicited proposals for the purchase of the gas attributable to its reversionary interest rights for resale in intrastate commerce.

On this state of facts on which there is no dispute El Paso seeks an order determining whether Southland, *et al.* may sell the gas from the Crane County leasehold in intrastate commerce without prior permission and approval of the Commission under Section 7(b) of the Natural Gas Act, whether Gulf, *et al.* must obtain the permission and approval of the Commission to cease making sales to Warren and to transfer their rights to Southland, *et al.*, and whether

Warren (now Gulf) may reduce its sales to El Paso to the extent they are attributable to the leasehold property without prior Commission permission and approval.

In like manner on April 8, 1975, Texaco Inc. in Docket No. CI75-594 filed a petition for a declaratory order to determine whether a lessee, by making an interstate gas sale, can commit more than its real property interest (i.e. its rights under its lease) thereby both encumbering forever the real estate and imposing upon the nonparticipating mineral fee owner the obligations of Section 7 of the Natural Gas Act. The facts underlying Texaco's petition are similar to those involved in El Paso's petition. In 1925 Gulf, as lessee, [440] and Goldsmith, *et al.* as lessors, executed a 50-year fixed term oil and gas lease by which Gulf obtained exclusive mineral rights to some 19,840 acres in Ector County, Texas, until August 7, 1975, when the mineral rights would revert to Goldsmith, *et al.*, with whom Texaco acquired a ¼ interest in 1929. Gulf sells gas from the Ector County leasehold to Phillips Petroleum Company under a percentage-type casinghead gas sales contract, and Phillips sells the residue gas from the tailgate of its Goldsmith Plant to El Paso. Approximately 18,000 Mcf per day of the residue gas sold to El Paso by Phillips is attributable to the Ector County lease. Texaco says that it has knowledge of these sales contracts but is not a party to either one.

On June 3, 1975, after a petition by Texaco, the Commission consolidated Docket Nos. CP75-209 and CI75-594 because of the similarity of the facts and legal questions, found that because there was no fac-

tual dispute and no request for a hearing there was no need to hold an evidentiary hearing, and provided opportunity for filing briefs. Accordingly, initial briefs were filed on June 20, 1975, or thereabouts, by Mineral Interest Owners, El Paso, Texaco, Gulf, People of the State of California and the Public Utilities Commission of the State of California, Exxon, Mitchell Energy Corporation and the Staff. Reply briefs were filed on June 25, 1975, by Mineral Interest Owners, El Paso, Texaco, Exxon, Phillips and the Staff.

On July 2, 1975, Exxon filed a motion requesting the Commission to include protective relief in any final order in the form of payback of volumes of gas if the Commission's order is reversed on review. The Mineral Interest Owners responded on July 3, 1975, supporting Exxon's motion on the basis of their understanding of it. By telegram of July 7, 1975, Gulf also supported the motion, and El Paso concurred on July 10, 1975, with a request for an amendment of the protective language.

On the question whether Southland, *et al.* may sell the gas from the Crane County leasehold in intrastate commerce without Commission approval and whether Goldsmith and Texaco may do likewise with respect to the Ector County gas, Mineral Interest Owners, Exxon and Texaco, with the support of Gulf, argue variously that they are not required to obtain abandonment authority before initiating intrastate sales. They point out [441] that the Commission has no authority to compel a producer to sell his gas in interstate commerce, and that their royalty interest

does not make them sellers of gas in interstate commerce within the meaning of the Natural Gas Act and in no way dedicates their gas to the interstate market. They cite *Mobil Oil Corp.* v. *F.P.C.*, 463 F.2d 256 (CADC 1971), *certiorari denied*, 406 U.S. 976 (1972), where the Court held that royalty owners were ordinarily not sellers of the gas. They note that in the instant case Gulf possessed only a 50-year leasehold right and had no legal authority to sell the gas produced beyond the termination date of the lease.

They rely heavily on *El Paso Natural Gas Co.* v. *Perry R. Bass*, 48 FPC 1269, Opinion No. 638 (1972). There Shell held a farmout lease from Bass, who retained a royalty with the option after Shell recovered the cost of drilling to receive in lieu of the royalty a ½ working interest in the lease. Shell later sold gas from its "properties" to El Paso, and El Paso was to purchase from seller's "interest" in the wells. Still later Bass notified Shell of its election to accept a working interest and attempted to sell its working interest gas to Natural Gas Pipeline Company, but El Paso objected. The Commission held that the Shell-El Paso contract did not purport to cover any gas save that produced from the properties owned by Shell, that Bass was a royalty owner and not a seller, that Section 7(b) did not apply to Bass, that farmouts should be encourged and that Bass did not have to obtain abandonment authorization before making its sale to Natural.

Texaco also argues that there will be no transfer of rights for the Commission to consider when Gulf's leases expire, for the leasehold estates will vanish and the reversion will occur by operation of law.

Texaco also contends that the Commission lacks authority to adjudicate matters of title and must conform to state law, citing *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64 (1938). Both Texaco and Exxon also argue that they would be deprived of their properties without due process of law in violation of the Fifth Amendment if they were forced to sell their gas to El Paso after Gulf's leases terminate.

El Paso takes a contrary view. It says that once natural gas begins to flow in interstate commerce it becomes dedicated and Section 7(b) provides the exclusive means of terminating [442] the service. The lessees have dedicated the gas produced by their wells and regardless of the termination of the lease, service must continue. It contends, further, that the reversionary interest owners step into the shoes of their predecessors, Gulf, *et al.*, and take the properties subject to the interstate dedications. It emphasizes that abandonment should not be permitted without a proceeding to determine that there is no betrayal of justifiable public reliance on the gas involved.

California says that the emphasis should not be placed on the contractual arrangements but on the fact that the gas is currently dedicated to interstate commerce by physical movement in El Paso's pipeline. California also argues that the *Mobil* case should not apply and that in any case the reversionary owners are like the sellers of leases in the *Rayne Field* case, *U.G.I.* v. *Continental Oil Co.*, 381 U.S. 392 (1965).

It is the position of the Staff that the gas from the subject acreage, whether produced before or after

expiration of the leases, is dedicated to the interstate market and that by virtue of their control over the gas the reversioners are subject to the constraints of Section 7(b). Staff adds that once the reserves are dedicated to the interstate market they become a part of the Commission's regulatory scheme, safeguarded by Section 7(b) to insure continuity and stability of service.

In our opinion the various mineral interest reversioners may not sell gas from the two leaseholds in intrastate commerce without prior permission and approval of the Commission. Although we have discovered no case directly in point, we are of the opinion that the cases and the purpose of the Natural Gas Act inevitably lead to this view. In the first place, the dedication involved is not the dedication of an individual party or producer, but the dedication of gas. In *CATCO, Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378 (1959), the Court said that once gas is dedicated "there can be no withdrawal of that supply from continued interstate movement without Commission approval." Furthermore, contractual arrangements are not [443] controlling as to whether the gas may be withdrawn from dedication. In *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 170 (1960) the Court upheld the Commission in granting an unlimited term certificate. The Court noted that the "service in which the producer engages is distinct from the contract which regulates his relationship with the transmission company in performing the service". Here a service is being rendered by Gulf to El Paso utilizing the gas in the Crane County and Ector County leases.

Because of the termination of the 50-year leases the lease holders, Gulf *et al.*, lose their leases and their rights pass to Southland, *et al* in one case and to Goldsmith, *et al* and Texaco in the other case. Of course, we have determined that gas may not be withdrawn from interstate commerce by the assignment of leases from one lessee to another. *Cumberland Natural Gas Company*, 34 FPC 132 (1965); *Blair-Vreeland*, — *FPC* —, Opinion No. 724, Docket No. CI74-331, March 18, 1975. But we do not rest our conclusion on these cases, but on the principle established by Section 7(b) that "service" may not be abandoned without our permission and approval. Thus it makes no difference whether a lease is transferred or terminates, the obligation of service imposed upon the dedicated gas continues. As said in *Hunt* v. *F.P.C.*, 306 F.2d 334, 342 (CA5, 1962), rev'd on other grounds, 376 U.S. 515 (1964), the duty to continue to serve is like an ancient covenant running with the land. This does not mean that we are modifying the law of Texas as to the leasehold rights; we are however recognizing rights and duties that have been created by the Congress under the Natural Gas Act. Nor are we depriving the reversioners of their property without due process of law, for we are merely holding that their property is subject to a Section 7(b) proceeding and, in any case, they will be compensated for any continued interstate sales under the Natural Gas Act.

The *Mobile* case does not call for any different result. Under that case the mineral interest owners in each of the leaseholds are not natural gas companies. However, the gas has been dedicated to inter-

state commerce and was being sold in interstate commerce by Gulf, *et al.* It cannot be sold in intrastate commerce, and the sales in interstate commerce abandoned without our permission and approval under Section 7(b).

[444] The *Bass* case, which did not involve the diversion of gas from interstate commerce, likewise does not alter our result. There the lessee, Shell, by means of its contract with El Paso, plainly intended to provide a service based upon the dedication of its interest in the leasehold, not the interest of Bass, who had the right to receive a ½ working interest in lieu of his royalty. The interstate dedication thus covered only part of the leasehold, while here the leaseholds were wholly dedicated to interstate commerce. In any case, we believe that the broad language used in *Bass* should be confined to the facts of the case and not extended to the difficult situation here involved. We therefore conclude that Section 7(b) applies to the sale of the gas from the dedicated reserves in the two leaseholds involved here until they are exhausted.

Mitchell Energy argues that should the mineral interest owners be held to be subject to Section 7(b) it would be erroneous for the Commission to exercise any jurisdiction over any reserves not connected to facilities rendering jurisdictional service. Thus undiscovered and undeveloped reserves, it says, fall beyond the Commission's jurisdiction over abandonment. Mitchell Energy is arguing over again the issues which it raised in Opinion No. 733, *Mitchell Energy Corporation*, — FPC —, Docket No. CI74-296, issued June 11, 1975. We believe those issues are adequately covered in that opinion.

As to whether Gulf, *et al.* must obtain abandonment permission in order to cease sales to Warren and transfer their rights to Southland, *et al.*, El Paso argues that the lessees have dedicated the natural gas produced by their wells to interstate commerce and may not cease making sales of the gas from these wells without abandonment authorization. El Paso indicates, however, that because Gulf has merged with Warren, Gulf would not have to obtain abandonment of its sale to Warren, but would to Phillips. Gulf itself points out that by virtue of the merger of Warren into Gulf there are no sales of gas between Gulf and Warren. Exxon says that with the expiration of the 50-year lease, El Paso's right to purchase production from Gulf ceases and so it does not require abandonment authorization.

[445] Staff says that an abandonment application by lessees would be superfluous and inconsistent with the purpose of Section 2.64 of the Commission's General Policy and Interpretations to avoid unnecessary filings. However, as El Paso argues, Section 154.91(e) of the Commission's Regulations leaves subject to Section 7(b) producers making percentage-type sales to plant operators selling gas in interstate commerce. Therefore it would seem that Gulf would have to file for abandonment of its sales to Phillips, and the other lessees would have to file for abandonment of their sales to Phillips and Gulf's former affiliate Warren, now part of Gulf. In our opinion this is not a mere technical requirement as staff would have it but would allow as to pass upon the merits of the lessees' abandonments upon the termination of the 50-year leases as well as the proposed

abandonment of the reversioners, who want to remove the gas from interstate commerce. We should have all the significant parties before us if the relations between the reversioners, lessees, processing plants, and El Paso are to be changed.

As to whether Warren and Phillips may reduce their sales to El Paso without prior Commission permission and approval El Paso points out that the sales are in interstate commerce and abandonment authorization must be obtained if the quantities are to be permanently reduced even though the contracts provide for the sale of only surplus residual gas. Gulf points out that Warren now means Gulf and says that upon expiration of the fixed term leases the gas produced therefrom will no longer contribute to the surplus residue gas Gulf could sell to El Paso, that the gas will belong to the reversioners, and that Gulf will have no control over it. The Staff, Exxon and Phillips say that under Section 154.91(e) of the Regulations the only obligation on a plant operator is to file an annual report listing any changes in the producers from whom the gas is purchased.

In our opinion the Commission did not intend to exempt plant operators from the requirement that they apply under Section 7(b) for abandonment of their sale to the extent that the sale has been reduced by a substantial and permanent loss of supply. Therefore the two plant operators Gulf (Warren) and Phillips should make applications under Section 7(b) if they lose substantial amounts of the gas they sell to El Paso upon termination of the 50-year leases.

[446] In its motion of July 2, 1975, Exxon argues that whether the Commission acts before July 14,

1975, or thereafter, the Commission's action may impose obligations upon a party which will result in irreparable injury to that party if the Commission order should be reversed upon court review. It points out that it would not be desirable to shut in production pending action upon a request for stay since such action would result in interruption of oil and gas production and possible permanent damage to the wells. It requests that the Commission in its final order in this proceeding include language intended to protect all parties pending ultimate judicial review.

Briefly Exxon would require that if the Commission requires abandonment authorization for the mineral interest owners, as we have here, and it should be determined on review that the gas may be sold to others than El Paso without abandonment authority, then any deliveries by Southland, Exxon or other mineral interest owners shall not constitute a dedication of their gas to the interstate market, acceptance of monies shall no prejudice the rights of the mineral interest owners to claims for any rate different from the rate tendered by El Paso, and El Paso shall be required to repay Southland, Exxon and the other mineral interest owners in gas for the deliveries made to it during judicial review. Mineral Interest Owners state their support of Exxon's motion with certain reservations. El Paso concurs with Exxon's conclusion as to the need for protective language in the Commission's order. However, since payback of gas either to or by El Paso will affect directly El Paso's level of service to the interstate market, El Paso believes that Exxon's language should be amended by requiring payment subject to further Commission order.

In our opinion it is not appropriate for us under the Natural Gas Act to include the protective provisions requested by Exxon. We believe that if the parties need protective provisions in the form of a stay, payback of gas volumes or otherwise, they should address themselves to the appropriate court.

[447] *The Commission orders:*

(A) In accordance with the above discussion:

(1) Southland, *et al.*, Exxon, Goldsmith, *et al.*, Texaco and other mineral interest owners of gas reserves in the Crane County and Ector County leases involved here may not, upon termination of the leases, sell gas in intrastate commerce without prior permission and approval of the Commission under Section 7(b) of the Natural Gas Act;

(2) Gulf, itself, need not obtain abandonment permission and approval to cease sales to its division, Warren, but other lessees must do so, and Gulf must do so with respect to its sales to Phillips;

(3) Gulf, formerly Warren, and Phillips may not reduce their sales to El Paso to the extent such sales are attributable to production from the subject leasehold property without prior Commission permission and approval.

(B) Exxon's motion to include protective language in the Commission's order is denied.

By the Commission.

(S E A L)

MARY B. KIDD,
Acting Secretary.

[448] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(Received August 6, 1975)

Application by Texaco Inc. for Rehearing

Texaco Inc. (Texaco) pursuant to Section 19(a) of the Natural Gas Act (15 U.S.C. 717) and Section 1.34 of the Commission's Rules of Practice and Procedure, respectfully applies for rehearing of the Commission's Opinion No. 737 ("Declaratory Opinion And Order On Termination Of Long-Term Leases") issued July 11, 1975 in the above named and numbered docket.

Opinion No. 737 is based upon the assumption that upon making an interstate sale, a lessee commits the total amount of the gas reserve, even though some of this gas will be produced after the lease expires. This decision would thereby allow a lessee to encumber property in which he has no rights under state law. As a result of such reasoning, the Commission has held that Texaco, as a reversionary owner (¼ interest) of a mineral fee will be compelled to sell gas in interstate commerce to El Paso Natural Gas Company (El Paso), upon termination of the lease currently held by Gulf Oil Corporation (Gulf) on

property located in Ector County, Texas. The Commission bases its holding upon Section 7(b) of the Natural Gas Act and declares that Texaco may not sell its gas in intrastate commerce without prior permission and approval of the Commission.

The Commission has acted outside the scope of its authority under the Natural Gas Act in rendering the decision herein. The Act gives the Commission jurisdiction over sales for resale in interstate commerce, but Texaco cannot be deemed to have made any disposition of its gas until its right to take gas in kind accrues on August 7, 1975, upon the termination of the lease. At that time Texaco should be free to exercise [449] its own choice regarding disposition of its share of the gas. This conclusion is squarely supported by prior decision of the Commission (*El Paso Natural Gas Co.* v. *Perry R. Bass,* 48 FPC 1269, Opinion No. 638 (1972)), and by statutory construction. Furthermore, as demonstrated in Texaco's initial brief and reply brief in this proceeding, the 5th and 10th Amendments to the United States Constitution do not allow the Commission to take the acion which it purports to take through Opinion No. 737.

The Commision in its decision asserts that Texaco and other reversionary interest owners will not be deprived of their property without due process of law since "they will be compensated for any continued interstate sales under the Natural Gas Act." One of the facts the Commision fails to mention is that gas is being sold for much higher prices in the intrastate market than in the price-regulated interstate market. Texaco will be deprived of its Fifth

Amendment rights if it is forced to sell to El Paso rather than being allowed to choose the disposition for its gas without "prior permission and approval of the Commission. . . ."

Under the laws of the State of Texas, a lessee has no rights concerning an oil and gas property after expiration of the lease. The Commission's decision herein would have the effect of creating a federal common law allowing a lessee to encumber property forever. This holding violates the rule established by the Supreme Court of the United States in *Erie Railroad Company* v. *Tompkins,* 304 U.S. 64 (1938), which unequivocally held that there can be no federal common law. Opinion No. 737 also violates the Tenth Amendment to the United States Constitution, which underlies the holding in the *Erie* case, which amendment reserves to the states those powers not granted to the federal government by the Constitution. It has long been established that the states, rather than the federal government, have the power to adjudicate title to land and minerals. The "tenure, transfer, control and disposition of real property are matters which rest exclusively with the state where the property lies. . . ." (*Sunderland* v. *United States,* 266 U.S. 226 at 232-33 (1924)).

In conclusion, Texaco urges the Commission to reverse [450] the position taken in Opinion No. 737 and to hold that no abandonment authorization for any party will be necessary or appropriate in regard to gas production from the Ector County property upon termination of Gulf's lease on August 7, 1975, regardless of what disposition is made of the gas at that time.

Respectfully submitted,

TEXACO INC.
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By /s/ C. FIELDING EARLY, JR.
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Houston, Texas
August 1, 1975

[451] (AFFIDAVIT OMITTED IN PRINTING)

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[453] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket Nos. CP75-209 and CI75-594

IN THE MATTERS OF

EL PASO NATURAL GAS COMPANY

and

TEXACO, INC.

Application of Mineral Interest Owners for Rehearing

Come now Mineral Interest Owners[1] and pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure and Section 19(a) of the Natural Gas Act, 15 U.S.C. Sec. 717r(a) file this application for rehearing of Opinion No. 737 issued July 11, 1975, in the captioned proceedings. In support of this application for rehearing Mineral Interest Owners state as follows:

SPECIFICATIONS OF ERROR

(1) The Commission erred in holding that Mineral Interest Owners must obtain abandonment authorization under Section 7(b) of the Natural Gas Act before making [454] sales in intrastate

[1] Mineral Interest Owners, on whose behalf this "Application" is filed, were listed on Exhibit A attached to Mineral Interest Owners' "Initial Brief" in this proceeding. In Opinion 737 the Commission referred to Mineral Interest Owners and the other holders of a reversionary mineral estate collectively as "Southland, *et al.*"

commerce of casinghead gas[2] attributable to Mineral Interest Owners' fee simple mineral estate in certain properties located in Crane County, Texas.
(2) The Commission erred in holding that Warren and Phillips must obtain prior Commission approval before reducing sales of gas to El Paso and that certain lessees must obtain prior Commission approval to cease sales to Warren.
(3) The Commission erred in refusing to include appropriate protective provisions in its order.

ARGUMENT

I. ***The Commission Erred In Holding That Mineral Interest Owners Must Obtain Abandonment Authorization Under Section 7(b) Of The Natural Gas Act Before Making Sales In Intrastate Commerce Of Casinghead Gas Attributable To Mineral Interest Owners' Fee Simple Mineral Estate In Certain Properties Located In Crane County, Texas.***

A. *Introduction*

Mineral Interest Owners are the owners of the reversionary mineral estate underlying approximately

[2] As Mineral Interest Owners pointed out in their initial brief, with respect to the properties that are the subject of Docket No. CP75-209 the only gas ever sold by Gulf to El Paso were volumes of casinghead gas. Gas well gas from the Crane County properties that are the subject of Docket No. CP75-209 has always been sold in intrastate commerce. No party to his proceeding has suggested that the Commission has any jurisdiction over the gas well gas that has always flowed in intrastate commerce and Mineral Interest Owners assume that the Commission's decision was intended to only apply to the casinghead gas.

43,000 acres [455] in Crane County, Texas.[3] Prior to July 14, 1975, this mineral estate was subject to a 50-year fixed-term oil and gas lease between the predecessor in interest of Mineral Interest Owners as lessor and Gulf Production Company, predecessor of Gulf Oil Corporation, as lessee.[4] At midnight on July 14, 1975, Gulf's fixed-term lease expired and Mineral Interest Owners currently hold fee simple title to their pro rata share of the mineral estate underlying the subject acreage.[5] Prior to the termination of the Crane County leases, Gulf had sold surplus residue casinghead gas at the tailgate of the plant attributable to its fixed-term leasehold interest to El Paso Natural Gas Company.

The Federal Power Commission in Opinion 737, dated July 11, 1975, held, in the words of the Commission, that Mineral Interest Owners as the owners of the

> "reserves in the Crane County . . . leases involved here may not, upon termination of the leases, sell gas in intrastate commerce without prior permission and approval of the Commission under Section 7(b) of the Natural Gas Act."[6]

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[3] Southland Royalty Company is also the owner of a fractional reversionary mineral estate interest in the properties covered by the captioned Docket CI75-594. This application for rehearing also applies to this fractional reversionary mineral estate of Southland.

[4] The nature of Mineral Interest Owners' estate is more fully described in its initial brief at pages 4-8.

[5] *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547 (Tex. Sup. Ct. 1973).

[6] Op. 737 at 10. As will be more fully discussed below, Mineral Interest Owners take exception to certain of the factual characterizations contained in the Commission's holding in this case.

The Commission further held that although Gulf need not obtain abandonment in order to discontinue sales to Warren, [456] certain other lessees must do so.[7] In addition, the Commission ordered that Warren may not reduce its sales to El Paso "to the extent such sales are attributable to production from the leasehold property without prior Commission permission and approval."[8] Finally, the Commission refused to include in its order protective language that had been requested by the parties.

As the Commission correctly stated in Opinion 737, the facts in this case are undisputed.[9] However, in Opinion 737 the Commission incorrectly stated that Mineral Interest Owners would, after midnight on July 14, 1975, be producing and making sales of gas attributable to the "leasehold" estate previously held by Gulf. For example, the Commission states at one point,

> "In our opinion the various mineral interest reversioners may not sell gas *from the two lease-*

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[7] The Commission stated in its order that:

> Gulf, itself, need not obtain abandonment permission and approval to cease sales to its division, Warren, but other lessees must do so, and Gulf must do so with respect to its sales to Phillips . . .

Op. 737 at 10.

[8] Op. 737 at 10.

[9] To the extent the Commission's decision is in any way based upon facts which have not been agreed to by the parties, Mineral Interest Owners contend that the Commission's decision is in error as not being supported by substantial evidence.

holds in intrastate commerce without prior permission and approval of the Commission."[10]

[457] The fact is that none of the gas which Mineral Interest Owners will produce from their fee simple interest is from or attributable to the leasehold interest of Gulf or any other leasehold. All of the gas attributable to Gulf's leasehold has been produced—there is no more. Furthermore, the Gulf leaseholds have terminated and no longer exist. Gas can no more be produced from that leasehold than it could be produced from any other nonexistent property.

The Commission's repeated references to Mineral Interest Owners' producing gas from its "leasehold" reflects a fundamental misconception that pervades the Commission's entire decision in this case.[11] The Commission assumes in its decision that Gulf's dedication of gas attributable to its completely separate property interest can somehow bind and dedicate to interstate commerce gas attributable to the separate property interest of Mineral Interest Owners. This assumption is completely invalid and without merit. There has been no dedication to interstate commerce of gas attributable to Mineral Interest Owners' fee interest and, therefore, no abandonment authorization

[10] Op. 737 at 5. The Commission makes repeated references throughout its opinion to Mineral Interest Owners making sales of gas from the Crane County "leaseholds".

[11] There is no question that the Gulf leaseholds have terminated and that Mineral Interest Owners hold fee simple interest to their pro rata share of the mineral estate underlying the subject acreage. *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547, 522 (Tex. Sup. Ct. 1973).

is necessary in order for Mineral Interest Owners to sell the gas attributable to their reversionary mineral estate to an intrastate purchaser of their choice."[12]

[458]

B. *The Commission Erred In Holding That Any Gas Attributable To The Reversionary Fee Simple Mineral Estate Is Dedicated to Interstate Commerce.*

The Natural Gas Act comprehends that before jurisdiction can attach there must be a voluntary dedication of service to the intrastate market."[13] Mineral Interest Owners' basic position in this case is that there has been no such dedication of gas attributable to their reversionary fee simple mineral estate."[14] The Commission's decision to the contrary in this case is reached only by making erroneous factual and legal assumptions, misconstruing a number of appellate and Supreme Court decisions and by ignoring the Commission's own precedent. Thus, the Commission erroneously states at the outset of its discussion that "[a]lthough we have discovered no case directly in point,

[12] Mineral Interest Owners have elected to sell their gas to Intratex Gas Company, an intrastate buyer of gas, which is a wholly-owner subsidiary of Houston Natural Gas Corporation, a distributor of gas in the City of Houston, Texas, and environs.

[13] *See Argo Oil Corporation*, 15 F.P.C. 601, 618 (1955); *Pioneer Gathering System*, 23 F.P.C. 260, 263 (1960); *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 387-88 (1959).

[14] In the interests of brevity Mineral Interest Owners hereby incorporate by reference in support of this application for rehearing all arguments made by Mineral Interest Owners in their Initial and Reply Briefs, which are on file with the Commission. *See* "Initial Brief of Mineral Interest Owners" at 8-20; "Reply Brief of Mineral Interest Owners" at 7-18.

we are of the opinion that the cases and the purpose of the Natural Gas Act inevitably lead to [the] view"[15] that Mineral Interest Owners must obtain abandonment authorization under Section 7(b) before making sales of gas in intrastate commerce. As will be discussed in detail below, neither the purpose of the Natural Gas Act nor any of the cases cited by the Commission support its decision in Opinion 737. To the contrary, the Act and the relevant cases compel the conclusion [459] that the Commission erred in holding that there has been a dedication of gas attributable to the reversionary fee simple interest of Mineral Interest Owners.[16]

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[15] The Commission's explanation of its reasoning begins with the last paragraph on page 5 of Opinion 737.

[16] The Commission characterized one of the arguments made by El Paso in its brief in the following manner:

> [El Paso] emphasizes that abandonment should not be permitted without a proceeding to determine that there is no betrayal of justifiable public reliance on the gas involved.

Opinion 737 at 5. The Commission does not specifically find in its decision that there has been any "public reliance" upon the Crane County gas allegedly dedicated to interstate commerce. Indeed, the parties to this proceeding, including the Commission staff, are in agreement that term oil and gas leases are extremely rare. See footnote 10 in the "Initial Brief of Mineral Interest Owners". There is absolutely no evidence in this case to support any conclusion that the public may have "relied" upon the Crane County gas or that the public interest requires that such gas continue to flow in interstate commerce. To the extent that the Commission's decision may in any way be based upon the conclusion that there has been any "public reliance" upon the continued flow of gas attributable to Mineral Interest Owners' fee simple estate in interstate commerce or that the public interest otherwise requires that such gas continue to flow in interstate commerce, it is in error as not being supported by substantial evidence.

The Commission begins the rationale for its decision by citing the *CATCO* case for the completely noncontroversial principle that once gas is dedicated to the interstate market it cannot be withdrawn without Commission approval.[17] There can be no question that once a particular supply of gas is dedicated to the interstate market that deliveries of [460] that supply of gas cannot be discontinued without prior Commission approval. But the decisive issue in this case is whether gas attributable to the reversionary fee simple mineral estate of Mineral Interest Owners has ever been dedicated to interstate commerce. There has not been any such dedication here.

The Commission continues its analysis, citing *Sunray Mid-Continent Oil Company* v. *FPC*, 364 U.S. 170 (1960), and stating that "contractual arrangements are not controlling as to whether the gas may be withdrawn from dedication."[18] Again, we agree. But there is no contention here that any "contractual arrangement" is being used to withdraw gas dedicated to interstate commerce. To the contrary, no such "contractual arrangement" to withdraw gas from interstate commerce exists because there has never been any dedication of gas attributable to Mineral Interest Owners' reversionary fee simple mineral estate to interstate commerce. In sum, neither *CATCO* nor *Sunray* support the Commission's decision since in both cases there was no question that the gas there had been dedicated and the only issue was whether once

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[17] *See* Op. 737 at 5, wherein the Commission cites *CATCO*; *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 (1959).

[18] *See* Op. 737 at 6.

dedicated it could be withdrawn. Here, there has never been any dedication of gas attributable to the reversionary fee simple mineral estate of Mineral Interest Owners.

Throughout Opinion 737 the Commission makes the erroneous assumption that the gas attributable to Mineral Interest Owner's fee simple mineral estate has somehow been dedicated to interstate commerce. In the words of the Commission:

> [T]he gas has been dedicated to interstate commerce and has been sold in interstate commerce by Gulf, *et al.* It cannot be sold in intrastate commerce, and the sales in interstate commerce abandoned without our permission and approval under Section 7(b).[19]

[461] In the final analysis, the Commission's assumption that the gas attributable to Mineral Interest Owner's fee simple estate is dedicated to interstate commerce must be based on the conclusion that somehow the delivery of gas attributable to Gulf's leasehold estate also committed the gas attributable to the Mineral Interest Owners' fee simple mineral estate to interstate commerce.

The fact is, however, no gas attributable to the reversionary fee simple mineral estate of Mineral Interest Owners' has ever been dedicated to interstate commerce. The only gas which was or could have been dedicated by Gulf was that attributable to Gulf's leasehold estate. In the simplest possible terms, all of

[19] Op. 737 at 6.

the gas attributable to Gulf's leasehold has been produced—there is no more.

The conclusion that Gulf's commitment of gas attributable to its fixed-term leasehold estate could not dedicate gas attributable to Mineral Interest Owners' estate is a matter of basic property law. It is well established that a reversionary interest, such as Mineral Interest Owners held during the term of Gulf's leasehold, is a separate property interest completely separate from Gulf's leasehold estate which exists simultaneously with the leasehold estate.

Mineral Interest Owners' property interest was, during the entire term of Gulf's 50-year lease, fully alienable and could be sold or otherwise transferred by Mineral Interest Owners completely separate and apart from Gulf's leasehold.[20] By like token, Gulf never had any interest in or power over Mineral Interest Owners' fee simple estate.[21] Just as the [462] owner of a life estate cannot bind the remainder, it is a fundamental principle of the law that a lessee for a term of years cannot bind the property interest of the reversioner. In the words of one recognized authority:

> The owner of a term for years cannot create an interest in land to endure beyond the term. It would follow that the owner of minerals could

[20] *See e.g., Union Electric Co.* v. *Slay Bulk Terminal, Inc.*, 475 S.W.2d 136 (Mo.Ct.App.—St. Louis 1971); *Haile* v. *Holtzclaw*, 414 S.W.2d 916 (Tex. 1967); *Katz* v. *Bakke*, 265 S.W.2d 686 (Tex. Civ.App.—San Antonio 1954, err. rev.).

[21] *Id.*

not create an interest to endure beyond his fixed term."[22]

It was solely the gas attributable to Gulf's fixed-term leasehold interests which was dedicated to interstate commerce.[23] Gulf, as the owner of a completely separate property interest, could not have dedicated Southland's gas to interstate commerce even if it had wished to do so.[24] Clearly, the Commission erred in holding that sales of gas attributable to Gulf's fixed-term lease dedicated to interstate commerce the gas attributable to the reversionary fee simple mineral estate of Mineral Interest Owners.

Mineral Interest Owners are well aware that the Commission apparently does not regard itself as being bound by [463] basic principles of property law. The facts in this case, however, do not present a situation in which fundamental property law[25] and Commis-

[22] *Williams & Meyers*, OIL AND GAS LAW § 332 at 117.

[23] Gulf has explicitly and unconditionally stated that it never intended to dedicate to interstate commerce any of the gas attributable to Mineral Interest Owners' reversionary fee simple estate. *See* "Initial Brief of Gulf Oil Corp." at p. 4.

[24] There is no evidence or suggestion by any party to this case that Gulf intended or attempted to dedicate the gas of Southland to interstate commerce. To the extent the Commission's decision is in any way based on the conclusion that Gulf intended or attempted to dedicate gas attributable to Mineral Interest Owners' revisionary interest, its decision is in error as not being supported by substantial evidence in addition to being erroneous for the reasons discussed above. See footnote 23, and accompanying text.

[25] Although the Commission may not be bound by principles of property law in situations in which its jurisdiction under the Natural Gas Act compel a different result, Mineral Interest Owners firmly believe that in this case the jurisdiction granted under the

sion jurisdiction clash. Indeed, the prior decisions of this Commission and reviewing courts [464] affirmatively establish that the Commission has no jurisdiction over gas attributable to Mineral Interest Owners' fee simple estate.

The Commission stated in Opinion 737 that the "purpose of the Natural Gas Act" led to its decision in that case.[26] There is no justification for any contention by the Commission that its decision in Opinion 737 is consistent with or required by the Natural Gas Act. The Natural Gas Act does not permit the Com-

Natural Gas Act does not compel or permit the result reached by the Commission in Opinion 737. Furthermore, Mineral Interest Owners question the wisdom of the Commission in straining to reach the result contained in Opinion 737 when the result does such great violence to uniformly accepted and well-established principles of property law. For the Federal Power Commission to so completely ignore the basic principle of comity. *See Wright*, FEDERAL COURTS, § 52 at p. 196 (2nd Ed. 1970). In other contexts the Federal Courts have given due deference to basic property principles in interpreting the manner in which to apply Federal Law. For example, under the Internal Revenue Code, reversion upon the termination of a fixed-term lease is not a taxable event for the reversionary interest owner. *See Hewitt Realty Co.* v. *Commissioner*, 76 F.2d 880, 884 (2nd Cir. 1935); *Miller* v. *Gearin*, 285 F.2d 225, (9th Cir.) *cert. den'd.* 250 U.S. 667 (1919). In this connection, we would note that in the *Bass* case, this Commission specifically recognized the importance of observing and adhering to basic property concepts when it stated as follows:

> The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell had no right to sell. We will not so alter the basic property rights of mineral owners through the fiction of Section 7(b) application.

48 F.P.C. at 1276. Mineral Interest Owners contend that the Commission erred in altering the basic property rights of Mineral Interest Owners through the fiction of Section 7(b) application.

[26] Op. 737 at 5.

mission to extend its jurisdiction over gas which has never been dedicated to interstate commerce. Indeed, the jurisdiction of the Commission is limited by the Natural Gas Act to gas which has been dedicated to interstate commerce. Since there has been no dedication of Mineral Interest Owners' gas to interstate commerce, the "purpose" of the Natural Gas Act actually support Mineral Interest Owners' contention that the Commission has no jurisdiction over gas attributable to Mineral Interest Owners' reversionary fee simple mineral estate.

It is clear that the desire to keep gas in the interstate market is not a "purpose" under the Natural Gas Act which can be used to create Commission jurisdiction. In *Mobil Oil Corporation* v. *F.P.C.*,[27] Judge Leventhal, speaking for the D.C. Circuit, rejected such an attempt to expand Commission authority, stating:

> We do not think a different result warranted or mandated on the ground that the purpose of the Act is to protect the ultimate beneficiaries against exploitation by natural gas companies. That was indeed the objective of Congress, see FPC v. Hope Natural Gas Co., 320 U.S. 591, 610, 64 S.Ct. 281, 88 L.Ed. 333 (1944). The FPC is to be commended for attempting to further that objective, but it is not sufficient justification upon which to base an expansion of the Act to activities [465] clearly not within its terms. Congress did not give the FPC carte blanche to take whatever action it might consider appropriate in furtherance of this purpose. The FPC is limited by the provision establishing its jurisdiction, and we do not find in that provision, rooted as it is in a sale in interstate commerce, any basis for reaching out to cover the landowner's lease or its royalty payments.

[27] 463 F.2d 256 (D.C.Cir. 1971), *cert. den'd*, 406 U.S. 976 (1972).

In light of the above, the Commission clearly erred in stating that the "purpose" of the Natural Gas Act required or supported its decision in Opinion 737 that the gas attributable to Mineral Interest Owners' reversionary fee simple mineral estate is dedicated to interstate commerce.

The Supreme Court decisions in *CATCO* and *Sunray,* far from supporting the Commission's decision, stand four-square against the principle that the Commission seeks to apply in this case. In dramatic contrast to the Commission's decision here, the Supreme Court in both cases recognized that the extent and terms of a dedication of gas to the interstate market is controlled by the owner of the gas.[28] Mineral Interest Owners are unquestionably the owners of the gas attributable to their reversionary fee simple mineral estate.[29] They have never offered any of the gas attributable to their fee simple estate for sale in inter-

[28] *See CATCO; Atlantic Refining Co. v. Public Service Commission,* 360 U.S. 378, 387-88 (1959); *Sunray Mid-Continent Oil Co. v. F.P.C.*, 364 U.S. 137, 141 (1960). In both cases the Commission squarely stated that a producer had the right to reject a certificate and that the Commission could not unilaterally and without the consent of the owner of the gas impose its jurisdiction over a specific reserve.

[29] *See Gulf Oil Corp. v. Southland Royalty Co.*, 496 S.W.2d 547 (Tex. Sup. Ct. 1973).

state commerce and have never sold any of such gas in interstate commerce. Gulf, or for that matter, any other third party, [466] could not[30] and did not commit the gas attributable to Mineral Interest Owners' fee simple mineral estate to interstate commerce. Therefore, it is clear that under *CATCO* and *Sunray,* the gas attributable to the reversionary fee simple mineral estate of Mineral Interest Owners has not been dedicated to interstate commerce by the sales of gas attributable to the fixed-term lease of Gulf.

Mineral Interest Owners' contention that the gas attributable to their fee simple interest has never been dedicated to interstate commerce is further supported by the D.C. Circuit's decision in *Mobil Oil Corporation* v. *F.P.C.*[31] In that case, the Court of Appeals held that, under "an ordinary lease by the landowner to the producer, there is neither a 'customary' sale in interstate commerce nor its equivalent in economic effect."[32] The D.C. Circuit's decision in *Mobil* is, however, illustrative of a broader principle that is relevant here. *Mobil* graphically demonstrates that the Commission's jurisdiction is confined to the specific property interest that is dedicated to interstate commerce. The Commission's attempts to distinguish *Mobil* on the grounds that there has been a dedication of Mineral Interest Owners' gas is clearly

[30] See footnote 23, *supra.*

[31] 463 F.2d 256 (D.C.Cir. 1971), *cert. den'd,* 406 U.S. 976 (1972).

[32] This decision is dispositive of any suggestion that the gas attributable to Mineral Interest Owners' fee simple estate was dedicated to interstate commerce as a consequence of Mineral Interest Owners' status as the holder of a royalty interest. *See also J. M. Huber v. Denman,* 367 F.2d 104 (5th Cir. 1966).

in error." As [467] has been discussed above, Gulf, or any other third party, could not have dedicated the gas attributable to the Mineral Interest Owners' fee simple mineral estate to interstate commerce. Thus, the holding in *Mobil* is clearly applicable in this case.

In no context, other than Opinion 737, has the Commission even suggested that dedication to interstate commerce of gas attributable to one property interest somehow dedicates to interstate commerce the gas attributable to the interest of another property owner. It is, for example, well established that a lessee whose lease only covers production from formations down to a specific depth can only dedicate to interstate commerce those volumes of gas which he has a right to produce and develop. The lessee does not, merely by making sales from his leased portion, commit all of the gas (*i.e. gas* which may be produced from formations below the leased depth) that may be attributable to the entire mineral estate regardless of depth. As the Commission must be aware, there are innumerable sales of gas in interstate commerce in which the obligation to make deliveries is limited to a specific zone or a specific depth and there has never been any suggestion that the commencement of deliveries of gas in

[33] The Commission stated in its opinion:

> The *Mobile* [*sic*] case does not call for any different result. Under that case the mineral interest owners in each of the leaseholds are not natural gas companies. However, the gas has been dedicated to interstate commerce and has been sold in interstate commerce by Gulf, *et al.* It cannot be sold in intrastate commerce, and the sales in interstate commerce abandoned without our permission and approval under Section 7(b).

Op. 737 at 6.

interstate commerce from such a zone or depth would subject gas from another zone or from other depths to F.P.C. jurisdiction.

The principle that the extent of the dedication, and therefore the extent of the Commission's jurisdiction, is limited to the specific gas dedicated is equally true when different parties own undivided interests in a single property. For example, if two producers own a 50% undivided interest in a single lease, the fact that one such lessee [468] chooses to sell his 50% of the gas in interstate commerce does not bind the owner of the other undivided 50% to sell his gas in interstate commerce. Thus, it is common industry practice for a portion of the production from a single well to flow into interstate commerce while another portion produced simultaneously goes intrastate. This common and uniformly accepted practice of "split-streaming" illustrates conclusively that the mere fact that gas is produced from a particular well, reservoir or field does not mean that all of the gas that may ultimately be produced from that well, reservoir or field is dedicated to interstate commerce. This conclusion is not in any respect altered by the fact that deliveries of gas by Gulf to El Paso occurred at the tailgate of a gas processing plant rather than at the wellhead. There are numerous situations in which gas has been "split-streamed" at the tailgate of a gasoline plant so that a portion flows into interstate commerce and a portion into intrastate commerce. The Commission, of course, has no jurisdiction under the Natural Gas Act over the production and gathering of gas and so jurisdiction would not attach as a con-

sequence of the gathering of the gas to gas "split-streamed" at the tailgate of a plant.[34]

Mineral Interest Owners contend the attempts of the Commission to distinguish *El Paso Natural Gas Co.* v. *Perry R. Bass,* 48 F.P.C. 1269 (1972), are clearly erroneous. No matter what the Commission says, the principles enunciated in *Bass* correctly reflect the law and are applicable to this case.[35] In Opinion 737 the Commission attempts to distinguish [469] *Bass* on the grounds that there the producer "plainly intended to provide a service based upon the dedication of its interests in the leasehold, not the interest of Bass,

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[34] In re *Grunel Gas Corp.*, 47 F.P.C. 1440 (1972); In re *Transcontinental Gas Pipe Line Corp.*, 50 F.P.C. 1811 (1973).

[35] The Commission recently reaffirmed the principles established in *Bass* in its decision on rehearing in In re *Blair-Vreeland*, —— F.P.C. ——, Opinion No. 724-A, Docket CI74-331 (May 14, 1975). In that case, the Commission stated:

> We will also elaborate on our comments on the *Bass* case. In doing so, we agree with the following statement of that case offered by *Blair-Vreeland*:
>
> > . . . In *Bass*, the question was not what Bass could bestow on Shell, but what Bass, in fact, did bestow [on Shell] by way of a farm-out agreement. Bass retained a ⅛ override convertible into a ½ working interest after payout of the cost of drilling the well to Shell. Shell attempted to dedicate 100% of the gas [to El Paso] and the Commission held that the gas to which Bass was entitled (½) was not dedicated because it was never owned by Shell (application, pp. 10-11).
>
> The question before the Commission was whether Shell's dedication to El Paso included the portion of the acreage covered by the working interest held by Bass. The Commission held that it did not, and in so holding, stated conclusions entirely consistent with those we have reached in the instant case.

Op. 724-A at 4.

who had the right to receive a ½ working interest in lieu of his royalty."[36] Despite the Commission's assertion to the [470] contrary, precisely the same situation exists here as existed in *Bass*. In this case, Gulf clearly intended to render a service limited to its fixed-term leasehold interest." Gulf could not, even if it had wishes to, attempt to provide a service based upon any other interest. Even if Gulf had wished to render a "service" greater than that which it could legally perform, that attempt could not in any way bind the gas attributable to Mineral Interest Owners' fee simple estate."[37]

In Opinion 737 the Commission continues its attempt to distinguish *Bass* by asserting that

> [t]he interstate dedication [in *Bass*] thus covered only part of the leasehold, while here the

[36] Op. 737 at 7. The Commission in Opinion 737 in referring to the *Bass* case stated that *Bass* "did not involve the diversion of gas from the interstate market. . . ." Although the Commission did not suggest that this fact was the basis for its decision, Mineral Interest Owners except to any suggestion that *Bass* is distinguishable because the gas attributable to Mineral Interest Owners' fee simple mineral estate will go to intrastate commerce. In the first place, in *Bass* the gas was first sold under a sixty-day emergency sale and then pursuant to a limited term certificate. At the time of the *Bass* decision, therefore, there was no certainty that the Bass gas would continue to flow in interstate commerce. More importantly, the decision in *Bass* did not in any way rely upon the fact that the gas there would or might flow in interstate commerce, but upon the fact that the Bass gas was *never* dedicated to interstate commerce. To the extent that the Commission's attempts to distinguish *Bass* were in any way based on the assumption that the gas there would flow in interstate commerce, it was in error.

[37] See footnote 23, *supra*.

[38] See footnote 20-22, *supra*, and accompanying text.

> leaseholds were wholly dedicated to interstate commerce."[39]

In addition to being in direct conflict with Opinion 724-A, this statement misses the entire point. There is no question that, as the Commission states, the "*leaseholds* [of Gulf] were wholly dedicated to interstate commerce." The fact that Gulf may have dedicated the gas attributable to its leasehold estate, however, is completely irrelevant to [471] and has no effect upon the gas attributable to Mineral Interest Owners' reversionary fee simple mineral estate. As has been previously stated, the only gas which has even been (or could be) dedicated to interstate commerce by Gulf is that attributable to Gulf's fixed-term leasehold. All of that gas has been produced and Gulf's fixed-term leasehold has terminated. Indeed, Mineral Interest Owners contend that here it is even clearer than in *Bass* that the Commission has no jurisdiction since *Bass* involved two interests in the same lease, while here there are two completely separate property interests. Mineral Interest Owners contend that the principles enunciated in *Bass* are clearly applicable to and dispositive of this case.

For the reasons discussed above, Mineral Interest Owners contend that the gas attributable to their fee simple estate has never been dedicated to interstate commerce. The Commission, therefore, erred in holding that Mineral Interest Owners are obligated to obtain abandonment authorization pursuant to Section 7(b) of the Natural Gas Act before making sales of gas in intrastate commerce.

[39] Op. 737 at 7.

C. *The Commission Erred in Suggesting That Mineral Interest Owners Are Successors of Gulf.*

In Opinion 737, the Commission suggests that Mineral Interest Owners are, in some manner, a successor in interest to Gulf.[40] Although the Commission disclaims that this is [472] the basis for its decision, Mineral Interest Owners take issue with any implication that they are successors in interest to Gulf and that, as a consequence, Mineral Interest Owners' gas has been dedicated to interstate commerce by Gulf. To the extent the Commission's decision may have been based on the assumption that Mineral Interest Owners are successors in interest to Gulf, it is in error.

In its discussion on this point, the Commission states that upon the termination of the 50-year fixed-term leases, "Gulf, *et al.*, lose their leases and their rights pass to Southland. . . ."[41] The Commission continues its argument by citing its prior decisions in *Cumberland Natural Gas Company,* and *Blair-Vreeland,* and then states that "Of course, we have determined that gas may not be withdrawn from interstate commerce by the assignment of leases from one lessee to another."[42]

[40] The portion of the Commission's decision to which this portion of Mineral Interest Owners' petition for rehearing refers reads as follows:

> Because of the termination of the 50-year leases the leaseholders, Gulf, *et al.*, lose their leases and their rights pass to Southland, *et al.*, in one case and to *Goldsmith, et al.*, in the other case. Of course, we have determined that gas may not be withdrawn from interstate commerce by the assignment of leases from one lessee to another. *Cumberland Natural Gas Company,* 34 F.P.C. 132 (1965); *Blair-Vreeland,* —— F.P.C. ——, Opinion No. 724, Docket No. CI74-331, March 18, 1975. But we do not rest our conclusion on these cases. . . .

Op. 737 at 6.

[41] *Id.*

These statements by the Commission evince a complete misunderstanding of the nature of the different property interest owned by Gulf vis-a-vis that owned by Mineral Interest Owners and the legal effect of the termination of Gulf's fixed-term lease. It is well established that a fixed-term lease and a reversionary interest are two distinct, co-existing property interests.[43] It is equally [473] well established that the owner of a reversionary mineral estate does not "succeed" to his property rights upon the termination of a lease, but rather, these property rights exist during and completely separate from the leasehold estate.[44] This principle stretches back to the earliest days of our legal heritage and is still good law today. In the words of one recent Court decision:

[42] *Id.*

[43] *See e.g., Katz v. Bakke,* 265 S.W.2d 686 (Tex. Civ. App—San Antonio 1954, err. rev.); *Union Electric Company v. Slay Bulk Terminals, Inc.,* 475 S.W.2d 136 (Mo. Ct. App—St. Louis, 1971); *Haile v. Holtzclaw,* 414 S.W.2d 916 (Tex. 1967); *Simes & Smith,* THE LAW OF FUTURE INTERESTS § 82 (2d Ed. 1956).

[44] In the words of one well-recognized authority on the subject:

> Since the reversion is merely the undisposed portion of that estate, it follows that all reversions are vested interests. It has already been pointed out that the principle factual differences which distinguishes the "vested" from the "contingent" interest is that in the case of vested future interests *there is no condition precedent to the taking effect and possession other than the termination of the preceding estate.* This, then, is one of the characteristics of the reversion.

Simes and Smith, THE LAW OF FUTURE INTERESTS § 82 at page 65 (2nd Ed. 1956) (emphasis added). *See also Haby v. Stanolind Oil & Gas Co.,* 228 F.2d 298, 305 (5th Cir. 1955).

> The ownership of the land by lessor is a present interest. The lessor is the owner of the land in fee, he is not a remainderman."[45]

[474] There simply is no "transfer", "assignment" or any other shifting of an interest from a lessee to the lessor upon the termination of a term lease.

The *Cumberland* and *Blair-Vreeland* cases referred to by the Commission are completely consistent with Mineral Interest Owners' position on this point. *Cumberland* says nothing more than that gas attributable to a leasehold interest *once dedicated* is dedicated even though all or a portion of the leasehold is transferred to another party. However, as was explained

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[45] *Union Electric Company v. Slay Bulk Terminals, Inc.*, 475 S.W.2d 136 (Mo. Ct. App—St. Louis 1971).

The Texas Supreme Court has recently given the following explanation of these general principles:

> In *Glen v. Holt*, 229 S.W. 684 (Tex. Civ. App—El Paso, 1921, no writ his.) it was stated:
>
> > "Remainders are created by deed or devise, whereas reversions are created by operation of law. It matters not how many estates are carved out of the owner's entire estate, a reversion will be left, provided they do not amount in quantity to his original estate."
>
> It is said in Thompson on Real Estate (PermEd.) Vol. 4, p. 716, § 2180, that a reversion is
>
> > ". . . [t]he residue of an estate left by operation of law and the grantor or divisor or his successors, commencing in possession of the determination of a particular estate granted or devised . . . . a reversion is never created by deed, but it arises only by implication of law, and remains vested in the sense of present fixed right of enjoyment in the future."

Haile v. Holtzclaw, 414 S.W.2d 916, 924 (Tex. 1967).

in detail there has been no dedication of any of the gas attributable to Mineral Interest Owners' reversionary fee simple mineral estate to interstate commerce because their property interest was and is completely separate from the fixed-term leasehold of Gulf. The only gas which was dedicated was that attributable to Gulf's leasehold estate, [475] all of which has been produced and delivered. If Southland were a purchaser or otherwise an assignee of Gulf's leasehold or the gas attributable thereto then, of course, *Cumberland* would be applicable. The fact is, however, in this case Mineral Interest Owners are not the assignee or successors in interest to Gulf. Indeed, there is no part of Gulf's leasehold interests to which Mineral Interest Owners could succeed, since such leasehold interest no longer exists and since all of the gas previously attributable thereto has been produced.

The Commission's decision in *Blair-Vreeland* is equally inapposite. There, as in *Cumberland,* it was determined that gas attributable to a lessee had previously been dedicated to interstate commerce and the assignee continued to be bound by this prior dedication. In this case, Mineral Interest Owners were not the assignee, or otherwise successors in interest to Gulf's leasehold.

D. *The Commission Erred In Holding That A "Service" Is Being Rendered Which Requires Abandonment Authorization.*

The Commission asserts at a number of points in Opinion 737 that a "service" has been commenced

which requires abandonment authorization before it may be discontinued. In this connection, the Commission stated in its decision that:

> "service" may not be abandoned without our permission and approval. Thus it makes no difference whether a lease is transferred or terminated, the obligation of service imposed upon the dedicated gas continues. As said in *Hunt* v. *F.P.C.*, 306 F.2d 334 342 (C.A.5, 1962), rev. on other grounds, 376 U.S. 515 (1964), the duty to continue to serve is like an ancient convenant running with the land.[46]

[476] The Commission does not specify what it means by the use of the word "service". Presumably it does not mean that once gas begins to flow from a particular source (*i.e.*, a particular well, reservoir or field), that all of the gas that ever flows from that well, reservoir or field must be delivered in interstate commerce. Such a holding would be erroneous and contrary to the position take by the Commission in all other cases.[47] As was noted above, it is quite common

[46] Op. 737 at 6. The Commission uses the word "service" at other points in its decision. For example, in discussing the *Sunray*, *supra*, case the Commission states that:

> The Court noted that the "service in which the producer engages is distinct from the contract which regulates his relationship with the transmission company in performing the service." Here a service is being rendered by Gulf to El Paso utilizing the gas in the Crane County and Hector County leases.

Op. 737 at 6. This discussion of service is also irrelevant and erroneous for the reasons set forth above.

[47] In the event the Commission is asserting that the commencement of deliveries from a particular source, such as a well, reser-

for a part of the production from a particular well to be dedicated to interstate commerce while another part of the same stream is going intrastate.

The Commission's references to an obligation to continue "service" must have reference to the principle that *once dedicated,* deliveries of the dedicated gas must continue until abandonment is granted. This appears to be what the Commission means when it says that once a service [477] obligation is undertaken, "the obligation of service *imposed upon the dedicated gas* continues." The crucial point is, of course, that the gas attributable to Mineral Interest Owners' reversionary fee simple mineral estate has never been dedicated to interstate commerce. The "service" that Gulf commenced and which it was obligated to continue was the "service" of delivering all of the gas attributable to its fixed-term leasehold estate. All of the gas attributable to Gulf's fixed-term leasehold estate has been delivered and it is physically impossible for this "service" to be continued.

The Commission is well aware that the "service" obligation imposed upon a producer of natural gas is established by the extent of the dedication of the producer's gas. If Producer A dedicates to interstate commerce the gas attributable to his 50% leasehold interest in a particular well, while Producer B dedicates to intrastate commerce the gas attributable to his 50% leasehold, then the interstate service obliga-

voir or field, automatically commits all of the gas from that well, reservoir or field to interstate commerce regardless of the terms and conditions of the dedication, Mineral Interest Owners contend that the Commission is in error for the reasons outlined above.

tion is limited to Producer A' 50% interest in the well's gas production. Here the only dedication of gas was of Gulf's leasehold estate. All of the gas attributable thereto has been produced and the leasehold has been extinguished. In contrast, none of the gas attributable to Mineral Interest Owners' fee simple mineral estate has been dedicated and therefore no "service" obligation was or could have been imposed with respect to Mineral Interest Owners' gas.

The Commission's reference to "service" in the context of the Fifth Circuit's decision in *Hunt* v. *F.P.C.,* is completely misplaced and the dicta referred to by the Commission is mischaracterized in Opinion 737.[48] In *Hunt,* the Fifth [478] Circuit cannot be read to say that the mere delivery of gas from a particular source, be it well, reservoir or field, irrevocably requires the continuation of deliveries from that particular source under all circumstances. In the thirteen years that have elapsed since the *Hunt* decision, neither the Commission nor the Courts have interpreted that decision in such a manner. Clearly what the Fifth Circuit meant when it referred to a "covenant running with the land" was the obligation or "covenant" to continue to deliver the reserves which had been dedicated to interstate commerce. Actually the Fifth Circuit's comparison of the "dedication"

[48] In the *Hunt* decision the Fifth Circuit stated:

> Like the ancient covenant running with the land, the duty to continue to deliver and sell flows with the gas from the moment of the first delivery down to the exhaustion of the reserve, or until the Commission, or on appropriate terms, permits cessation of service under Section 7(d), 15 U.S.C.A. Section 1717F(b).

Hunt v. F.P.C., 306 F.2d 334, 342 (5th Cir. 1962).

concept to the idea of a "covenant running with the land" is illustrative and supportative of Mineral Interest Owners' position in this case. The only dedication or "covenant" that has ever been made related solely to the gas attributable to Gulf's fixed-term leasehold estate. That dedication or "covenant" had no relationship to Mineral Interest Owners' completely separate reversionary fee simple mineral estate. Just as a "covenant" that is attached to one property interest (such as a fixed-term lease) cannot bind a completely separate property (such as the reversionary interest), the dedication of the gas attributable to Gulf's fixed-term leasehold estate has no relationship to or effect upon the gas attributable to Mineral Interest Owners' fee simple estate. For the above reasons, the Commission erred in holding a "service" is being or has been rendered which would require Mineral Interest Owners to obtain abandonment prior to making sales of gas attributable to their reversionary fee simple mineral estate.

E. *The Commission Erred In Unlawfully Discriminating Against Mineral Interest Owners and Depriving Mineral Interest Owners of Property Without Due Process of Law.*

As has been shown in the preceding discussion, the Commission's treatment of Mineral Interest Owners in this case is in complete contradiction to its treatment of producers in all other cases. In no other instance has the Commission held that the dedication of gas attributable to one property interest can somehow bind and dedicate the gas attributable to a completely separate and distinct property interest, particularly

when it is undisputed that there was no intention to bind and dedicate the gas attributable to the second property interest. The marked contrast between the treatment afforded Mineral Interest Owners and all other [479] producers is rendered crystal clear by comparing the Commission's decision here with that in *Bass, supra.* As has been detailed above, the principles enunciated in *Bass* are clearly applicable to the present case. Mineral Interest Owners have, in effect, been singled out for a difference in treatment which is not justified by difference in condition. Such undue discrimination by a regulatory agency is clearly forbidden as a matter of law,[49] and is in violation of the due process clause of the United States Constitution.[50]

The Commission's treatment of Mineral Interest Owners in this case also constitutes an unlawful deprivation of property in violation of the United States Constitution.[51] As the Commission is well aware, the rate for which gas can be sold in interstate commerce is a fraction of that for which Mineral Interest Owners have contracted to sell their gas to an intrastate purchaser.[52] Mineral Interest Owners are, therefore, confronted with the prospect of sustaining a tremendous financial loss as a consequence of the requirement that they commerce sales of their gas in interstate commerce even though Mineral Interest Owners are not subject to FPC jurisdiction under

[49] *See City of Chicago v. F.P.C.*, 128 U.S.App.D.C. 107, 115, 385 F.2d 629, 637 (D.C.Cir. 1967), *cert. den'd*, 390 U.S. 945 (1968).

[50] *See* U.S. CONST. Amend. V.

[51] *See* U.S. CONST. Amend. V.

[52] See footnote 12, *supra.*

these facts. For these reasons, Mineral Interest Owners contend that the Commission erred in unlawfully discriminating against Mineral Interest Owners and depriving Mineral Interest Owners of property without due process of law.

II. *The Commission Erred In Holding That Warren and Phillips Must Obtain Prior Commission Approval Before Reducing Sales of Gas to El Paso And That Certain Lessees Must Obtain Prior Commission Approval To Cease Sales To Warren.*

The Commission held in Opinion 737 that Warren and Phillips are required to obtain abandonment authority before [480] they may "reduce" sales of residue gas to El Paso. The Commission's holding on this point is in error. Although there may be a reduction in the actual volumes of residue gas delivered to El Paso, there will be no reduction in the volumes which Warren and Phillips contracted to sell El Paso and which the Commission certificated to be sold under such contract.[53] As was detailed in Mineral Interest Owners' initial brief in this case,[54] the contracts between Warren and Phillips and El Paso did not and could not include any volumes of gas attributable to the reversionary fee simple mineral estate of Mineral Interest Owners. Thus, there will be no reduction in the volumes of gas covered by and dedicated under the Warren and Phillips contrasts with El Paso and under the related certificates issued by the Commission.

[53] *See* "Initial Brief of Mineral Interest Owners" at 17-20.

[54] "Initial Brief of Mineral Interest Owners" at 4-8.

The Commission also held in Opinion 737 that, although Gulf would not have to seek prior Commission approval before it ceased sales to Warren, certain other lessees [55] who had been making sales to Warren would have to seek such abandonment authorization. The Commission appears to be stating that Gulf need not obtain abandonment of its sales to Warren, because Warren is now a wholly-owned subsidiary of Gulf and, therefore, there is actually no sale between Gulf and Warren. Although Mineral Interest Owners agree that Gulf need not obtain abandonment before discontinuing sales to Warren, Mineral Interest Owners disagree with the Commission's decision that the other lessees (all of whom obtained their rights by assignment from Gulf) must obtain abandonment authorization. Neither Gulf nor any other of the lessees must obtain abandonment before discontinuing deliveries to [481] Warren, since all of the gas which has been committed by Gulf and the other lessees has been produced and delivered. There is, in essence, nothing remaining for which abandonment must be sought. To the extent the Commission may have determined that any of the lessees were required to obtain abandonment because the Commission felt that the termination of the leases affected some type of "transfer" of dedicated gas to Mineral Interest Owners, the Commission is also in error.[56] As has been illustrated

[55] Presumably the Commission has reference to several producers which took farmouts from Gulf with full knowledge of the limitation of Gulf's fixed-term leases. See footnote 12 of "Initial Brief of Mineral Interest Owners".

[56] Such a contention was made by El Paso in its petition for a declaratory order and was refuted in detail by Mineral Interest

above, the termination of Gulf *et al.'s* fixed-term leases did not in any respect effect the transfer of any gas (or property rights) from Gulf *et al.* to Mineral Interest Owners.

Mineral Interest Owners believe that neither Gulf, Phillips, Warren nor any of the other lessees are required to obtain abandonment prior to discontinuing sales of gas to El Paso. Even if for technical reasons there is some such requirement imposed upon Gulf, Phillips, Warren or the other lessees, however, this would have no effect upon the unrelated right of Mineral Interest Owners to commence sales in intrastate commerce of gas attributable to their fee simply mineral estate. As was emphasized in Mineral Interest Owners' initial brief, since neither Gulf, Phillips, Warren nor any other lessee ever owned or sold gas attributable to the fee simple mineral estate of Mineral Interest Owners, sales of gas to Intratex from such mineral estate are completely separate from, and independent of, any Commission authorization or permission which Warren, Phillips, Gulf or any other lessees may have to obtain because of the termination of Gulf's leasehold estate. To the extent the Commission held, or implied, that Mineral Interest Owners' right to sell gas attributable to their reversionary fee simple mineral estate is in any way limited by any obligation, Gulf, Warren, Phillips or any other lessee may have to obtain abandonment authorization, the Commission was in error.

Owners at pp. 17-18 of the "Initial Brief of Mineral Interest Owners."

III. *The Commission Erred In Refusing To Include Appropriate Protective Provisions In Its Order.*

The Comission in Opinion 737 refused to include in Opinion 737 certain protective provisions which Exxon, [482] pursuant to a Motion of July 2, 1975, had urged be included in the Commission's Order. Mineral Interest Owners supported and concurred in Exxon's Motion, with certain reservations. El Paso also agreed that a protective order was needed, but contended that Exxon's language should be amended by requiring payment subject to further Commission order.

Due to the serious injury that would have been done Mineral Interest Owners by the failure of the Commission to include such protective provisions. Mineral Interest Owners on July 14, 1975 sought and obtained a temporary stay of Opinion 737 from the Fifth Circuit, insofar as the Commission failed to include appropriate protective provisions. After the issuance of this stay, certain parties to this case, including Mineral Interest Owners and the Federal Power Commission represented by its solicitor, met and agreed to an "Order Providing Interim Protective Order" which was subsequently entered by the Fifth Circuit as of July 14, 1975, and the temporary stay dissolved.[57] Under its terms, this "Order" is to be in effect until a petition for review of the final Commission Order on rehearing of Opinion 737 is filed in a Court of Appeals and any concurrently filed Motion

[57] A copy of this "Order Providing Interim Protective Order" is included as Exhibit A in Exhibit 1 attached hereto.

for stay or protective order is decided by the Court of Appeals and further judicial review is exhausted.

Mineral Interest Owners believe that the Commission erred in not including appropriate provisions in its original order to protect Mineral Interest Owners and El Paso and that it would be error to fail to include such protective provisions in the Commission's Order on Rehearing. As has been outlined in detail in this brief, Mineral Interest Owners firmly believe that the Commission is without jurisdiction over gas attributable to Mineral Interest Owners' fee simple mineral estate. Should Mineral Interest Owners be required to continue deliveries in interstate commerce without the existence of a protective order, they will be [483] faced with the possibility that, even should they prevail on appeal, the mere act of involuntary delivery pursuant to an illegal order could ultimately be deemed a dedication of the gas to interstate commerce. While Mineral Interest Owners believe that any order or decision holding that such involuntary delivery pursuant to an illegal order constituted a dedication of gas would be in error, it is unfair and highly prejudicial to Mineral Interest Owners to expose them to the possibility that a court might so find. Conversely, Mineral Interest Owners recognize that El Paso is entitled to protection in the event Mineral Interest Owners are permitted by the Commission or the courts to discontinue deliveries to El Paso and El Paso ultimately prevails on appeal.

In this connection Mineral Interest Owners and El Paso have agreed among themselves regarding appro-

priate protective provisions which should be included in the Commission's order on rehearing. A copy of such agreement is attached as Exhibit 1.[88] Section 6 of such agreement provides in pertinent part:

> El Paso and Southland agree to request the Federal Power Commission on rehearing of Opinion 737 to include in its order on rehearing and to request on appeal that the relevant appellate court issue a protective order(s) providing for the repayment of gas by El Paso to Southland in the event that Southland is successful upon rehearing or appeal and conversely for the repayment by Southland to El Paso in the event Southland is successful upon rehearing or upon appeal and it is ultimately determined that deliveries should have continued to El Paso.

[484] Accordingly, Mineral Interest Owners submit that the Commission should include in its order on rehearing protective provisions which will give effect to Paragraphs 4 and 5 of the agreement betwen El Paso and Mineral Interest Owners. We submit that these provisions are just and reasonable and in the public interest and will fully protect El Paso (and its customers) if El Paso should ultimately prevail while protecting Mineral Interest Owners if they should prevail.

---

[88] The agreement attached is between Southland and El Paso. Due to the large number of people and the distances involved, the other Mineral Interest Owners and El Paso have not yet executed a formal document regarding protective provisions. The remaining Mineral Interest Owners and El Paso have, however, agreed in principle to the execution of formal documents which are, in substance, identical to that executed by Southland.

Mineral Interest Owners wish to make it clear that by urging and agreeing to the entry of protective provisions as described above, that it is not in any way recognizing that the Federal Power Commission has any jurisdiction whatsoever over volumes of gas which Mineral Interest Owners may deliver to El Paso under compulsion of Opinion 737 or any other effective order of the Commission or the courts. Mineral Interest Owners further wish to make it clear that Mineral Interest Owners urging of and agreement to the entry of appropriate protective provisions as described above will be without prejudice to any substantive or procedural rights Mineral Interest Owners may have or may assert including, but not limited to, the right of Mineral Interest Owners to seek judicial review of Opinion 737 and the order on rehearing of Opinion 737 or any other effective order of the Commission or the courts and that Mineral Interest Owners will have the right to obtain at any time a stay or other protective or remedial orders from the Commission or the courts. Furthermore, Mineral Interest Owners' urging of and agreement to the entry of appropriate protective orders as described above is not intended to nor should in any way be construed to constitute an admission by Mineral Interest Owners that El Paso has any right to purchase any of the gas which Mineral Interest Owners deliver to El Paso under the compulsion of Opinion 737 or any other effective order of the Commission or the courts, it being understood that such gas is being delivered to El Paso solely under the compulsion of Opinion 737 or any other effective order of the Commission or the courts and that such delivery shall

not constitute a dedication of any gas of Mineral Interest Owners to the interstate market. Mineral Interest Owners further state that they shall be free to discontinue deliveries of gas to El Paso made under the compulsion of Opinion 737 or any other effective order of the Commission or the [485] courts whenever such compulsion ceases and that they intend to discontinue such deliveries as soon as such compulsion is relieved.

Mineral Interest Owners believe that the Commission has the power under the Natural Gas Act to enter such an order. In addition, it appears that the principal parties, including El Paso and Mineral Interest Owners, are in agreement that the entry of an appropriate protective order is necessary and in the public interest in this case.

Conclusion

For each and all of the foregoing reasons, Mineral Interest Owners respectfully pray that the Commission grant this Application for Rehearing of Opinion 737 in accordance with the grounds and reasons set forth above and upon rehearing issue an order (1) declaring that Mineral Interest Owners are not obligated to obtain abandonment authorization under Section 7(b) of the Natural Gas Act before making sales in intrastate commerce of casinghead gas attributable to Mineral Interest Owners fee simple mineral estate in certain properties located in Crane County, Texas, (2) declaring that neither Gulf, Warren, Phillips nor any of the other lessees must obtain prior Commission approval to cease sales to Warren, Phil-

lips or El Paso, and (3) including the protective provisions requested above.

Respectfully submitted,

/s/ Henry S. May, Jr.
J. Evans Attwell
Henry S. May, Jr.
Francis J. Coleman
Vinson, Elkins, Searls,
Connally & Smith
2500 First City National
Bank Building
Houston, Texas 77002

[486]

Platt W. Davis, III
William M. Sawyer
Vinson, Elkins, Searls,
Connally & Smith
1701 Pennsylvania Avenue,
Suite 1120
Washington, D. C. 20006
Attorneys for
Mineral Interest Owners

Date: August 8, 1975

[487] (Verification Omitted in Printing)

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[488] (Certificate of Service Omitted in Printing)

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[489] EXHIBIT 1

SOUTHLAND ROYALTY COMPANY
1600 First National Building
Fort Worth, Texas 76102

August 4, 1975

El Paso Natural Gas Company
Box 1492
El Paso, Texas 79978

Re: Waddell Interim Agreement Between
Southland Royalty Company and
El Paso Natural Gas Company

Gentlemen:

At midnight on July 14, 1975, the 50-year fixed-term oil and gas leases held by Gulf Oil Corporation in Crane County, Texas, terminated. Southland Royalty Company ("Southland") holds fee simple title to its pro rata share of the mineral estate underlying the acreage previously covered by such leases. *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547 (Tex. Sup.Ct. 1973).

By Opinion No. 737 issued July 11, 1975, in *El Paso Natural Gas Company*, Docket No. CP75-209, the Federal Power Commission held that in the absence of obtaining abandonment authorization under Section 7(b) of the Natural Gas Act, Southland may not sell in intrastate commerce certain quantities of gas attributable to the fee simple mineral interests which Southland holds upon termination of Gulf's 50-year fixed-term oil and gas leases. As evidenced by its briefs in Docket No. CP-75-209, Southland is firmly con-

vinced that it is not required to obtain any prior Commission authorization in order to make sales in intrastate commerce of any gas attributable to its fee simple mineral interests. Therefore, Southland intends to promptly seek rehearing of Opinion 737 and, if rehearing is denied, to promptly seek judicial review of Opinion 737 and any Commission order denying rehearing thereof. However, in the absence of favorable action by the Commission on rehearing, the obtaining of a judicial stay or reversal of Opinion 737 or some other event or action, either administrative, judicial or legislative, removing the compulsion imposed by Opinion 737 to continue deliveries, Southland, under the compulsion of Opinion 737 and the penalties prescribed in the Natural Gas Act, will have to continue to make deliveries of quantities of casinghead residue gas in interstate commerce. Accordingly, the question arises as to the price to be tendered by El Paso for any gas delivered by Southland under the compulsion of Opinion 737 or any other effective order of the Commission or the courts.

[490] 1.

Subject to the disclaimers and reservations set forth below, it is mutually agreed that the price to be tendered by El Paso for any such gas delivered by Southland under the compulsion of Opinion 737 or any other effective order of the Commission or the courts shall be the higher of:

(1) An initial rate which shall consist of the sum of 76.5¢/Mcf plus 1.5¢/Mcf for gathering plus reimbursement for all existing and any new or increased production, severance, or similar taxes,

BEST COPY AVAILABLE

which initial rate shall be adjusted proportionately upward or downward as the total gross heating value of such gas varies from one thousand (1,000) Btu per cubic foot (saturated with water vapor at 60°F. and 14.73 Psia), provided, further, that such initial rate shall be increased by 1.5¢/Mcf per annum on January 1 of each year hereafter; or

(2) One hundred fifty percent of the just and reasonable national rate, including all permitted escalations, reimbursements and redeterminations, as prescribed by the Commission from time to time in Docket R-389-B, or any successor proceeding involving the establishment of just and reasonable national rates; or

(3) Any rate higher than that specified elsewhere in this paragraph which El Paso shall, as a consequence of legislative, regulatory, or judicial action or otherwise, become permitted to pay producers such as Southland.

It is understood and agreed that if El Paso is prevented by the Federal Power Commission from including the cost of gas paid for pursuant to the provisions of this paragraph in El Paso's rates to its customers, Southland shall refund to El Paso the amount so disallowed by the Federal Power Commission pursuant to a final nonappealable order plus interest on such amounts at the rate of 7% per annum.

2.

It is understood that this letter shall be in effect on a day-to-day basis and only for so long as Southland

shall make deliveries under the compulsion of Opinion 737 or any other effective order of the Commission or courts, it being recognized that as soon as such compulsion ceases Southland intends(and is contractually obligated) to make sales and deliveries of the subject gas to an intrastate pipeline purchaser.

3.

The execution of this agreement by Southland and its acceptance of the price provided herein for any deliveries of gas to El Paso under the compulsion of Opinion 737 or any other effective order of the Commission or the courts is not intended to and shall not be [491] construed as recognition that the Federal Power Commission has any jurisdiction whatsoever over volumes of gas which Southland delivers to El Paso under compulsion of Opinion 737 or any other effective order of the Commission or the courts, it being expressly understood and agreed that the payment of such price by El Paso and receipt thereof by Southland shall be without prejudice to any substantive or procedural rights Southland may have or may assert including, but not limited to, the rights of Southland to seek rehearing and judicial review of Opinion 737 or any other effective order of the Commission or the courts, and the rights of Southland to obtain at any time a stay or other protective or remedial orders from the Commission or the courts. Moreover, neither the execution of this agreement nor the acceptance by Southland of the price provided herein for deliveries of gas to El Paso under the compulsion of Opinion 737 or any other effective order of the Commission or the courts is intended to or shall in any way be

construed to constitute an admission by Southland that El Paso has a right to purchase any of the gas which Southland delivers to El Paso under the compulsion of Opinion 737 or any other effective order of the Commission or the courts, it being understood and agreed that such gas is being delivered to El Paso solely under the compulsion of Opinion 737 or any other effective order of the Commission or the courts and that such deliveries shall not constitute a dedication of any gas of Southland to the interstate market. Southland shall be free to discontinue deliveries of gas to El Paso made under the compulsion of Opinion 737 or any other effective order of the Commission or the courts whenever such compulsion ceases.

4.

It is further understood and agreed that in the event Southland shall prevail upon rehearing of Opinion 737 or upon appeal or shall otherwise be relieved of the compulsion imposed by Opinion 737 or any other effective order of the Commission or the courts and thereby Southland shall be relieved of the compulsion to continue deliveries in interstate commerce, and it shall be later ultimately determined by a final nonappealable order of the Commission that Southland should have continued to make such deliveries, then upon the issuance of an appropriate final, nonappealable Commission or court order declaring that the delivery of repayment volumes shall not constitute a dedication of any gas reserves from which such repayment volumes are delivered, Southland will repay volumes of gas it should have delivered to El Paso but which were not actually delivered during the

period when the compulsion of Opinion 737 or any other effective order of the Commission or the courts was not in effect, provided that such repayment by Southland shall be subject to the following conditions:

(a) the payback volumes shall be in accordance with the specifications and conditions set forth in Exhibit B are to be delivered in an equitable manner over a reasonable period of time at a mutually agreeable point or points on El Paso's pipeline facilities.

(b) El Paso shall pay for such repaid volumes of gas pursuant to the pricing provisions set forth in this letter as in effect at the time of repayment by Southland;

[492] (c) repayment of gas pursuant to this paragraph shall not (i) limit or affect the right of Southland to seek further Commission or judicial review of and action on Opinion 737 or any other effective order of the Commission or the courts, (ii) prejudice or limit any substantive or procedual rights that Southland may have as specified in this letter or otherwise, (iii) constitute recognition that El Paso has the right to purchase any of the gas so repaid, (iv) constitute recognition that the Federal Power Commission has any jurisdiction whatsoever over such volumes of gas or, (v) constitute a dedication of such gas to interstate commerce;

(d) Southland shall not be obligated to repay gas to El Paso in the event Southland has insufficient available gas production to make such repayment from properties owned by Southland in Crane

County, Texas, on the effective date of this letter agreement, provided, however, that Southland represents (i) that it is entitled under an agreement dated February 7, 1975, between Southland and Intratex Gas Company, a Texas corporation, to use certain natural gas production attributable to certain properties (in addition to the natural gas production that is the subject of Opinion 737) owned by Southland on the effective date of this letter agreement for purposes of repayment under the circumstances described in this paragraph and that (ii) Southland will not relinquish this contractual right, and provided, further, that Southland may at its discretion make repayment with gas production from properties other than those owned by Southland in Crane County, Texas, on the effective date of this letter agreement; and

(e) if for any reason the compulsion under which Southland is making repayment pursuant to this paragraph shall cease, Southland may immediately discontinue such repayment and El Paso shall be obligated to, in turn, repay to Southland in gas for any repayment volumes delivered to El Paso, which repayment by El Paso shall be pursuant to the provisions of paragraph 5 of this letter.

5.

If Southland should seek rehearing of Opinion 737 or judicial review of a final order on rehearing of Opinion 737 and upon rehearing or review or after subsequent administrative hearings it should be ultimately determined by a final nonappealable order that

the gas which is delivered to El Paso in compliance with Opinion 737 or any other effective order of the Commission or the courts could have been sold to others than El Paso without Southland obtaining abandonment authority from the Commission, then any deliveries by Southland or receipt of payment therefor in compliance with Opinion 737 and any other effective order of the Commission or the courts shall not have constituted a dedication of any of Southland's gas to the interstate market; further El Paso shall be required upon the effective date of any such final nonappealable order or decision determining that deliveries could [493] have been made to others than El Paso without Southland obtaining abandonment authority from the Commission to repay Southland in gas for the deliveries made to it in compliance with Opinion 737 and any other effective order of the Commission or the courts. Such repayment is to be made by El Paso subject to the following conditions:

(a) the payback volumes are to be delivered in an equitable manner over a reasonable period of time, subject to further Commission order as to scheduling but not as to entitlement if El Paso and Southland cannot agree as to such scheduling;

(b) payback by El Paso shall be at or near the Waddell Gasoline Plant in Crane County, Texas, or such other point as shall be mutually agreeable to Southland and El Paso;

(c) Southland shall return to El Paso the monies paid for the volumes represented by such payback volumes, such repayments to be made within thirty (30) days following the end of each calendar

month during which payback volumes are delivered by El Paso;

(d) the payback volumes shall not be considered to be jurisdictional gas and acceptance thereof by Southland, or any of its customers, shall not subject any of them to Commission jurisdiction; and

(e) if for any reason it shall be determined that Southland was under a continuing compulsion to deliver gas to El Paso and that, as a consequence, El Paso need not repay gas to Southland, El Paso may immediately discontinue such repayment and Southland shall be obligated to in turn repay El Paso in gas for any repayment volumes delivered to Southland, which repayment by Southland shall be pursuant to the provisions of Paragraph 4 of this letter.

6.

El Paso and Southland agree to request the Federal Power Commission on rehearing of Opinion 737 to include in its order on rehearing and to request on appeal that the relevant appellate court issue a protective order(s) providing for the repayment of gas by El Paso to Southland in the event that Southland is successful upon rehearing or appeal and conversely for the repayment by Southland to El Paso in the event Southland is successful upon rehearing or upon appeal and it is ultimately determined that deliveries should have continued to El Paso. The substance of such requested protective order(s) shall be as set forth in paragraphs 4 and 5 of this letter. The failure of the Commission or any appellate court to include the protective language requested pursuant to the preceding

sentence shall not, however, affect the rights and obligations as set forth in this letter and agreed to by El [494] Paso and Southland. It is further agreed by El Paso and Southland that the payback provisions contained in paragraphs 4 and 5 of this letter shall be the sole measure of damages and liability as between El Paso and Southland for harm that may have been done to Southland on the one hand by the receipt by El Paso of gas delivered by Southland under the compulsion of Opinion 737 and any other effective order of the Commission or the courts, or to El Paso on the other hand as a consequence of Southland's failure to deliver gas in interstate commerce which it is ultimately determined by a final nonappealable order should have been delivered to El Paso, provided, however, that this sentence shall in no event relieve Southland or El Paso of their obligation to repay volumes of gas as provided in this letter or limit or abrogate the right of El Paso or Southland to seek monetary damages for the market value (determined in the case of El Paso seeking damages from Southland by reference to the price that the gas for which repayment is being sought was sold for intrastate commerce at the time of production less the price which El Paso would have paid for such gas at the time of production, and in the case of Southland seeking damages from El Paso by reference to the price that the gas for which repayment is being sought could have been sold for in intrastate commerce at the time of production less any amount which Southland actually received in payment for such gas) of the gas plus interest which either El Paso or Southland shall fail or be unable to repay as provided in paragraphs 4 and 5 of this letter.

7.

It is recognized that certain parties to Docket No. CP75-209, including Southland and El Paso, and the solicitor of the Federal Power Commission have agreed to the entry of an "Order Providing Interim Protective Order," in *Southland Royalty Co.* v. *F.P.C.*, Docket No. 75-2851, —(5th Cir.) a copy of which is attached as Exhibit A. Nothing in this letter is intended to alter the effect of such "Order Providing Interim Protective Order" or the rights and obligations set forth therein.

8.

Deliveries of gas by Southland and payment therefor by El Paso shall be made pursuant to the General Terms and Conditions set forth in Exhibit B attached to this letter.

If the foregoing is agreeable to El Paso, would you please so indicate by signing the attached copy of this letter in the space provided below and returning the same to the undersigned at your earliest convenience.

Yours very truly,

SOUTHLAND ROYALTY COMPANY

By /s/ I. JON BRUMLEY
I. JON BRUMLEY, *President*

AGREED TO AND ACCEPTED
this 7th day of August, 1975.
EL PASO NATURAL GAS COMPANY

[495]

EXHIBIT A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 75-2851

SOUTHLAND ROYALTY COMPANY, ET AL, *Petitioners,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

(FILED JULY 21, 1975)

Order Providing Interim Protective Order

Having considered the Motion of Southland Royalty Company, *et al.* ("Southland"), and an agreement of parties, including also El Paso Natural Gas Company ("El Paso") and Southland in *Exxon Corporation* vs. *Federal Power Commission,* No. 75-1118 in the United States District Court for District of Columbia, it is Ordered that:

The Court's temporary stay issued in this proceeding on July 14, 1975, is hereby vacated and the following is substituted therefor:

> If Southland or Exxon Corporation ("Exxon") should seek review of a final order on rehearing of Opinion No. 737 and upon review it should be ultimately determined that the gas which is delivered to El Paso in [496] compliance with Opinion No. 737 could have been sold to others than

El Paso without Southland or Exxon obtaining abandonment authority from the Commission, then any deliveries by Southland, Exxon, or the other mineral interest owners during the period this order is in effect shall not have constituted a dedication of their gas to the interstate market and acceptance of monies paid for gas delivered during the period this order is in effect shall not prejudice the rights of Southland or Exxon or the other mineral interest owners to claims for any rate different from the rate tendered by El Paso or other rights in the premises; further, El Paso shall be required to repay Southland, Exxon, and the other mineral interest owners in gas for the deliveries made to it during the period this order is in effect. Such repayment is to be made by El Paso subject to the following conditions: (a) the pay-back volumes are to be delivered in an equitable manner over a reasonable period of time, subject to further Commission order as to scheduling but not as to entitlement if El Paso, Southland and Exxon cannot agree as to such scheduling; (b) Southland, Exxon, and the other mineral interest owners shall return to El Paso the monies paid for such pay-back volumes, such repayments to be made within thirty (30) days following the end of each calendar month during which pay-back volumes are delivered by El Paso; and (c) the pay-back volumes shall not be considered to be jurisdictional gas and acceptance thereof by Southland, Exxon, or the other mineral interest owners, or any of their customers, shall not subject any of them to Commission jurisdiction.

This order shall be effective until a petition for review of the final Commission order on rehearing of Opinion No. 737 is filed in a court of appeals and any concurrently filed motion for stay or protective order is decided by the court of appeals and further judicial review is exhausted; provided that any obligations incurred under the temporary stay of July 14, 1975, as superseded above, shall continue in effect.

The FPC has represented that it does not concede that the Court has jurisdiction to enter a protective order in this matter; [497] however, in order to settle a controversy and inasmuch as the Court has determined to act, the FPC has represented that it believes that the foregoing provisions are the most equitable manner of preserving the *status quo* and will not move to vacate this order.

Entered as of this 14th day of July, 1975.

/s/ JAS. P. COLEMAN
Judge
United States Court of Appeals

Consented to by:

/s/ PLATT W. DAVIS, III
Platt W. Davis, III
Counsel for Southland Royalty Company, *et al.*

/s/ SHERMAN S. POLAND
Sherman S. Poland
Counsel for Exxon Corporation

/s/ C. FRANK REIFSNYDER
C. Frank Reifsnyder
Counsel for El Paso Natural Gas Company

/s/ ALLAN ABBOT TUTTLE
Allan Abbot Tuttle
Solicitor
Federa' Power Commission

[498]

EXHIBIT B

General Terms and Conditions To Apply To Waddell Interim Agreement Between Southland Royalty Company and El Paso Natural Gas Company

1.

These General Terms and Conditions are made subject to the letter agreement between El Paso and Southland dated August 4, 1975, to which these General Terms and Conditions are appended and, in the event of any conflict or ambiguity, the letter agreement between El Paso and Southland dated August 4, 1975, shall control.

2.

The delivery of gas hereunder shall begin at 12:01 a.m. on July 15, 1975, and shall continue on a day-to-day basis. These provisions shall apply only to such residue gas attributable to casinghead gas that Southland shall make available for delivery to El Paso at the outlet of the Warren Petroleum Company Gasoline Plant in Crane County, Texas. Nothing in these provisions or in the letter dated August 4, 1975, shall be construed to limit the manner in which Southland or its designee operate their gas-producing properties and gas processing facilities.

3.

The point of delivery of gas delivered hereunder shall be at the inlet of El Paso's gas measurement facilities located adjacent to Warren Petroleum Com-

pany's Waddell Gasoline Plant in Crane County, Texas.

4.

Southland will deliver gas hereunder at a pressure sufficient to enter El Paso's gathering system against the working pressure maintained therein from time to time at the point of delivery, provided such working pressure shall not exceed six hundred (600) psig, and provided further that neither Southland nor El Paso shall be obligated to install compression facilities in order to deliver gas hereunder, but either may do so at its option.

5.

The gas delivered hereunder shall be merchantable natural gas and shall have a total gross heating value of not less than one thousand (1,000) Btu per cubic foot. Such gas [499] shall not contain more than one-quarter (¼) grain of hydrogen sulphide nor more than five (5) grains total sulphur (mercaptans) per one hundred (100) cubic feet; two percent (2%) by volume of carbon dioxide nor more than two-tenths (0.2) of one percent (1%) by volume of oxygen. Southland shall install, at its sole cost and expense, all separators and/or other devices which may be found necessary to prevent hydrocarbons and water in their liquid state from entering El Paso's gathering system at the point of delivery hereunder. If any gas delivered hereunder fails to meet any one of said quality requirements, then El Paso shall have the right, at its option, to refuse to accept such gas.

6.

On or before the tenth (10th) day of each calendar month, El Paso shall render to Southland a statement showing the total volume of gas measured in El Paso's meter station during the preceding calendar month, and on or before the twenty-fifth (25th) day of the calendar month in which such statement is rendered, shall tender its check for payment for all gas received hereunder during such calendar month. The statement and check shall be mailed to:

Southland Royalty Company
1600 First National Bank Building
Fort Worth, Texas 76102

Each party hereto shall have the right at all reasonable times to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement or computation made under or pursuant to these General Terms and Conditions. Any statement shall be final as to all parties unless questioned within one (1) year after payment thereof has been made.

7.

Any expense incurred in connection with the purchase and receipt of gas shall be borne by El Paso, and any expenses incurred in making the delivery and sale shall be borne by Southland, provided, however, that El Paso shall, as set forth in the attached letter dated August 4, 1975, reimburse Southland for all severance, production and similar taxes levied on such gas prior to the delivery thereof to El Paso.

8.

Measurement of gas delivered hereunder and related activities will be performed by El Paso in facilities installed by El Paso in accordance with the American Gas Association Gas Measurement Committee Report No. 3, Revised 1969, as amended from time to time, provided however, that Southland may install check measuring equipment.

9.

[500] The unit of Volume for purposes of measurement of gas delivered hereunder shall be one (1) cubic foot of gas at a temperature base of sixty degrees (60°) F. and at a pressure base of fourteen and seventy-three hundredths pounds (14.73 lbs.) per square inch absolute. Atmospheric pressure shall be assumed to be thirteen and two-tenths pounds (13.2 lbs.) per square inch absolute. Volumes shall be determined in accordance with American Gas Association Gas Measurement Committee Report No. 3, Revised 1969, as amended from time to time. Gas delivered hereunder shall be sampled by El Paso within ten (10) days of the date of first deliveries and tested by appropriate laboratory analysis for purposes of determining the total gross heating value thereof, and such determination shall be made every three months thereafter.

10.

Southland warrants title to all gas deliveries hereunder and its right to deliver same and warrant that such gas shall be free and clear of all liens and adverse claims.

11.

Southland shall be in control and possession of the gas covered hereby until it shall have been delivered at the point of delivery, and thereafter, El Paso shall be in control and possession thereof.

El Paso shall have no responsibility with respect to any gas deliverable to it hereunder until it is delivered at the point of delivery hereunder or on account of anything which may be done, happen or arise with respect to said gas before such delivery, and Southland shall have no responsibility with respect to such gas after its delivery or on account of anything which may be done, happen or arise with respect to said gas after such delivery.

12.

Each party hereto shall be excused from performing pursuant to these General Terms and Conditions, other than to make payments for gas delivered hereunder, to the extent it is rendered unable to perform by a force majeure situation, but only for the period of time such force majeure situation continues. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, breakage or accident to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells or plant operations, breakage of gathering or transmission lines, and other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and

which by the exercise of due diligence such party is unable to prevent or overcome.

[501] 13.

Any notice provided for or permitted in these General Terms and Conditions shall be deemed sufficiently given and served when and if deposited in the United States mail, postage prepaid and registered, addressed to Southland at the address referred to in paragraph 6 hereof, or to El Paso at P.O. Box 1492, El Paso, Texas 79978, as the case may be, or to such other address as either party shall respectively hereafter designate in writing. Routine communications, including monthly statements and payments, shall be considered as duly delivered when mailed by either registered mail or ordinary first class mail, postage prepaid.

—END—

[502] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(FILED AUGUST 8, 1975)

Application of Exxon Corporation for Rehearing of Opinion No. 737

Exxon Corporation, an intervenor and party-in-interest in Docket No. CP75-209 applies, pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, for rehearing of the Commission's "Declaratory Opinion and Order on Termination of Long-Term Leases" issued in these proceedings on July 11, 1975. In support of this application for rehearing, Exxon shows as follows:

A. *The Commission Erred in Holding that Gulf Dedicated Exxon's Mineral Interest*

In its Opinion No. 737 the Commission held that the action of a lessee, Gulf Oil Corporation (Gulf), in selling its interest in production from leasehold properties also committed the interest of mineral fee owners, such as Exxon and Southland Royalty Company (Southland), in production after termination of the lease. According to the Commission, the lessee dedicated Exxon's interest because Gulf rendered

"service" which may not be abandoned without Commission approval under Section 7(b) of the Act. The Commission's conclusion is based upon a number of misconceptions of fact and law and is fundamentally wrong. The Commission fails to address the question of how the mineral interest owners succeed to the lessee or how a lessee can encumber the rights of the lessor in the property after termination of the lease—concepts totally foreign to real property law. In the final analysis, the Commission assumes its conclusion through asserting that Gulf performed a "service" which is imposed upon Exxon's gas. The Commission asserts that because Gulf's sale was a "service", dedication of Gulf's production from its leasehold interest somehow extends beyond that interest and commits the production of Exxon and the other mineral owners.

[503] No explanation is provided as to how, by denominating Gulf's sale as a service, Gulf was empowered to dedicate interests which it did not own. Yet, obviously, even when one assumes that Gulf's sale constituted a "service" the question of the extent of dedication of that "service" remains unanswered.

The Commission's "reasoning" appears to be that Exxon must obtain abandonment authorization because the gas is dedicated to service to El Paso. The gas is dedicated because Gulf performed a service, and under Section 7(b) a service cannot be abandoned without authorization. The circularity of reasoning is obvious. The Commission provides no logical or legal basis for its conclusion.

It is no answer to conclude that because Gulf performed a service it did, or legally could, dedicate the

interests of the owners of the mineral fee. Nor is it any answer to declare that the "service imposed upon the dedicated gas continues", for the fundamental question remains, can a lessee dedicate gas for a service beyond the extent of its legal interest[1]

No rationale or reasoning was advanced to show why or how Gulf's sale (service) of production from its interest dedicated the interests of Exxon.[1] This failure to provide subsidiary findings and to articulate the reasons for its decision with reasonable clarity is, in itself, error. Section 8(b) of the Administrative Procedure Act 5 U.S.C. §557(c); *Baltimore & Ohio R. Co.* v. *Aberdeen & RR Co.*, 393 U.S. 87, 92 (1968).

[504]

B. *The Commission Erred in Holding That Exxon Succeeded to the Interest of Gulf*

Opinion No. 737 is replete with instances where the Commission assumed that Exxon has succeeded

[1] A corollary question could be posed:

If a lessee can commit a greater interest than he owns, does a lessee owning a partial working interest but selling the full well stream prior to sale by a co-owner of another working interest, commit the interest of the co-owner? Or, does a lessee commit the interest of an adjacent leaseholder? The obvious answer in both cases is that the lessee does not commit the interest of others because he cannot do so and, accordingly, dedication under the Natural Gas Act is no greater than the interest of the seller. Of course, in both instances suggested above the lessee would be required to obtain abandonment authorization if he wished to discontinue the sale of *his* interest, but neither the lessee, nor the co-owner, nor the adjacent leaseholder would be required to obtain abandonment before he could sell his interest, and the Commission could not force the co-owner or adjacent leaseholder to sell his gas in interstate commerce.

to the interest of Gulf. Of course, it has not. Exxon's interest as owner of a mineral fee is completely independent of the lessee's interest. In no sense is Exxon a successor-in-interest. The Commission's error is reflected in its repeated reference to the mineral interest owners' production from "leaseholds".[3] The leaseholds ceased to exist at midnight July 14, 1975. Exxon does not produce any gas from a leasehold. Likewise, in error is the Commission's declaration (p. 6) that at the termination of the 50-year leases the leaseholders, Gulf, *et al.*, "lose their leases and their rights pass to Southland, *et al.*". The leases terminated on July 14, 1975, but Gulf passed no rights or obligations to the lessors. All rights and obligations under the lease ceased. Nothing passed to the lessors. The Commission's failure to recognize this fundamental concept let it into error whereby it has incorrectly assumed that Exxon and other mineral interest owners are analogous to successor lessees under a lease.

The Commission's reliance upon *Atlantic Refining Co.* v. *FPC,* 360 U.S. 378 (1959) and *Sunray Mid-Continent Oil Co.* v. *FPC,* 364 U.S. 170 (1960) are illustrations of this basic misconception. Of course, neither case involved a question whether a lessee, by making a sale, committed an interest greater than that which it owned. In CATCO, the Court was merely referring to the fact that when the Commission tenders a certificate to the producer-lessee before inception of deliveries, the producer-lessee is free to reject because there has been no dedication of *its interest* prior to commencement of deliveries. There is no question here but that Gulf, after deliveries

[3] See pp. 2, 3, 5, and 7.

began, was not free to reject a certificate or the terms upon which it was authorized to sell *its interest.*[3] Likewise, in *Sunray,* the Court's holding was merely that a certificate [505] need not be limited by the term of sales contract. Nothing in that case can be construed to hold that a dedication of a producer-lessee's interest under a certificate also dedicates the reversionary interest of the mineral fee owner.

Similarly, the off-hand reference to a covenant running with the land in *Hunt* v. *FPC,* 306 F.2d 334, 342 (5th Cir. 1962) cannot reasonably be construed to imply that a lessee commits more than his interest under his lease. In *Hunt* the Court was emphasizing the fact that the Commission could not, by means of a price condition in a temporary certificate, eliminate a producer-seller's right to file for contractually authorized rate increases. In this connection it noted that commencement of service under the temporary certificate dedicated the seller's interest, but that such dedication did not deprive him of his rights under Section 4. The question of dedication of the interest of a mineral fee owner by a lessee was not even remotely involved.[4]

[3] We recognize that Gulf, as a percentage seller under the initial arrangement would not be required to obtain a certificate for its sale to Warren Petroleum Corporation. We also recognize that, at some point, the sale by Gulf to Warren ceased when Warren became a corporate division of Gulf.

[4] Since it is customary in the large majority of oil and gas leases to provide that the lease may be maintained by production, cases such as CATCO, Sunray, and Hunt are premised upon the assumption that the leases there involved continue for the life of production.

The Commission has also misconstrued the impact of *Mobil Oil Corp.* v. *FPC,* 463 F.2d 256 (D.C. Cir. 1972)* as it relates to the issue presented here. There is no question here of royalty payments being taken in kind during the term of the lease. Thus, the Commission's claim (p. 6) that, under *Mobil,* a royalty owner desiring to take his gas in kind during the lease term would need prior abandonment authority completely misses the point. The [506] importance of *Mobil* is its holding that the royalty owner who does not take payments in kind is not a seller under the lease. Consequently, dedication by the lessee *of its interest* does not carry with it a dedication of the royalty owners (lessor's) interest when the lease terminates (463 F.2d at 462, see Exxon Initial Br. p. 7). It follows that since there has been no dedication of the lessor's interest by the lessee, the lessor cannot be required to obtain abandonment authorization of an interest which has not been dedicated.

The Commission's attempt to restrict the reasoning of *El Paso Natural Gas Co.* v. *Perry R. Bass,* 48 FPC 1269 (1972) to its specific facts only points to further error—arbitrary and discriminatory treatment against

* On page 6 of Opinion No. 737 the Commission makes reference to the Mobile case in a context where it is obvious that it was referring to the Mobil case at 463 F.2d 256 which involved Commission jurisdiction over royalty payments. The Mobile case, United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332, 338-339 (1956) holds that relationships between the parties are established initially by their contracts which are subject to review by the Commission. In its brief Exxon referred to the Mobile case in support of its position that the Commission cannot compel it to contract for the sale of its gas to El Paso (see Exxon Initial Br. p. 5). The Commission does not come to grips with this issue and its failure to do so constitutes additional error.

Exxon and the other mineral interest owners. The Commission asserts that in *Bass* the lessee intended only to dedicate its interest in the leasehold which would be subject to the ripening of Bass's interest based upon a condition subsequent. But nowhere does the Commission show where or how Gulf intended to commit more than its interest in the production from its leasehold for the 50-year term of the lease. The Commission's explanation that the *Bass* rationale should "not [be] extended to the difficult situation here involved", is no substitute for legal analysis. Properly analyzed, no extension of the rationale which controlled *Bass* is involved here. Both *Bass* and this proceeding are governed by the same basic concept that a lessee can dedicate no interest greater than the interest which he owns. To deny this concept, as the Commission does here, is to assert jurisdiction far beyond the confines of the Natural Gas Act.

On page 7 of Opinion No. 737 the Commission, states that "Section 7(b) applies to the sale of gas from the dedicated reserves in the two leaseholds involved until they are exhausted." The simple fact is that the dedicated reserves, that is, those in which Gulf had an interest, have been exhausted. They were exhausted when the leaseholds expired. The Commission's reference to leaseholds as if they continue to exist is clearly erroneous.

C. *The Commission Erred in Holding That Exxon's Fifth Amendment Rights Are Not Violated*

The Commission's assertion (p. 6) that it is not denying Exxon of property without due process by requiring it to obtain abandonment authorization for

a sale or service it has never entered into, constitutes further error. As we noted in our initial brief (pp. 3-6), the requirement [507] that Exxon make a sale to El Paso of gas produced from its mineral fee at the termination of Gulf's leasehold interest does, in and of itself, constitute an unlawful taking in violation of the Fifth Amendment to the U.S. Constitution. Exxon is not in the position of a seller who has already committed his gas to the interstate market. To force Exxon to sell its interest to El Paso through an assertion that Section 7(b) applies is to require that Exxon enter into a contract, constructive or otherwise, for an initial commitment of its interest. Such a requirement is beyond the power of the Commission to impose. *Southern Louisiana Area Rate Cases,* 428 F.2d 407 42● (5th Cir. 1970); *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.,* 350 U.S. 332, 338-339 (1956); *FPC* v. *Transcontinental Gas Pipe Line Corp.,* 365 U.S. 1, 17 (1961). The fact that Exxon might receive a regulated rate if it were required to contract with El Paso for the sale of its gas does not eliminate the Constitutional invalidity of the Commission's action. The taking results from forcing Exxon to initiate a jurisdictional sale. Cases which uphold economic regulation of an activity voluntarily undertaken simply are not apposite (see Exxon Initial Br. pp. 5-6).

D. *The Commission Erred in Failing to Recognize the Effects of Texas Law*

Although the Commission sketches its opinion in terms of Section 7(b) of the Act, the ultimate effect is to alter real property law of the State of Texas. In holding that the lessee has encumbered the interest

of the mineral fee estate, the Commission has changed basic relationships established under Texas law. In other circumstances, the Commission claimed jurisdiction, under Section 7(c), over royalty owners, brushing aside a claim that such action was contrary to state property law (*Denman* v. *J. M. Huber Corp.,* Opinion No. 562, 42 FPC 164 (1969)). In reversing the Commission, the Court of Appeals held that [*Mobil Oil Corp.* v. *FPC,* 463 F.2d 256 at 262 (D.C. Cir. 1972)]:

> "To refer to the royalty owner as engaging in the sale is to depart from common understanding of the words used, industry parlance, economic equivalent, or any other foundation hitherto considered a source for discerning Congressional intention."

By the same token, the Commission's holding that a lessee may encumber the mineral fee estate arising after termination of the lease departs from common understanding, including local law, and cannot be countenanced. The Commission must recognize that when questions of local law [508] are involved, the law of the state is controlling. *Erie RR Co.* v. *Tompkins,* 304 U.S. 64 (1938).

E. *The Commission Should Provide Protective Relief Pendite Lite*

By motion filed July 2, 1975, Exxon proposed a form of protective order which would afford protection to all parties pending review. In Opinion No. 737 the Commission did not question the validity or purpose of such an order. However, it declined to provide the protective relief stating that "it is not

appropriate for us under the Natural Gas Act to include protective provisions requested by Exxon".

The Commission's failure to act resulted in the filing of a petition for review and request for stay by Southland in the Court of Appeals for the Fifth Circuit and a complaint, motion for injunction, and motion for temporary restraining order by Exxon in the United States District Court for the District of Columbia. As the result of these filings, which engaged the emergency attention of two Courts as well as of the parties and the Commission, itself, an interim arrangement was worked out under the aegis of the two Courts involved. This resulted in an order of the Court of Appeals for the Fifth Circuit which provides protective relief until the Court can act upon a request for stay or other protective relief, *pendite lite,* after a petition for review has been filed based upon a final order on rehearing in this proceeding.

We respectfully disagree with the Commission that it is "not appropriate" for it to provide protective relief *pendite lite.* We suggest that this case presents a significant instance where the administrative agency can, and should, assist the Court, the parties, and the public by adopting a protective order. If the Commission should adhere to its position on the merits of this case, its protective order could be substantially in the form of the Courts order of July 14, 1975, a copy of which is attached hereto, merely extending the term of the protective order until completion of judicial review. If, on rehearing, the Commission should reverse its position on the merits in Opinion No. 737, as we urge them to do, only a slight modification of

alternative (A) in Exxon's motion of July 2, 1975, would be required to reflect the change agreed to by the parties and adopted by the Court in its order of July 14, 1975.

Conclusion

Wherefore, for the foregoing reasons, in addition to the reasons heretofore presented in its brief in these proceedings, Exxon requests that, upon rehearing, the [509] Commission reverse its position stated in Opinion No. 737 and hold that the interests of Exxon and the other mineral fee owners were not dedicated by the sales by Gulf of gas produced from its leasehold interest and that no abandonment authorization under Section 7(b) is required. Exxon also requests that the Commission issue an appropriate protective order *pendite lite.*

Repectfully submitted,

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August 8, 1975.

[510] (AFFIDAVIT OMITTED IN PRINTING)

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[511] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

El Paso Natural Gas Company

Docket No. CI75-594

Texaco Inc.

(FILED AUGUST 11, 1975)

Application of El Paso Natural Gas Company for Rehearing

EL PASO NATURAL GAS COMPANY ("El Paso"), being aggrieved by the Commission's Opinion No. 737 issued July 11, 1975, in the above-styled and docketed proceeding, hereby respectfully applies for rehearing thereof, pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure.

I.

The Commission in its Opinion No. 737 issued on July 11, 1975, ordered that gas then being produced and sold in interstate commerce from two 50-year fixed term leases[1] must continue to be sold in interstate commerce after the expiration of said leases absent Section 7(b) abandonment authorization. In Opinion No. 737, the Commission also denied a motion of Exxon

[1] The lease in Docket No. CP75-209 covers property located in Crane County, Texas, and expired on July 14, 1975. The lease in Docket No. CI75-594 covers property in Ector County, Texas, and expired on August 7, 1975.

Corporation ("Exxon"),[2] supported by El Paso,[3] requesting the inclusion in the Commission's opinion of certain language intended to protect all parties pending ultimate judicial review.

II.

It remains El Paso's belief that the language proposed in its answer to Exxon's motion is necessary to protect all the parties pending [512] ultimate judicial review of the questions here involved. As Exxon explained in its motion for inclusion of protective order, the procedure of shutting-in the subject wells pending appeal of the Commission's order cannot be followed in this proceeding because the subject gas is casinghead gas which must continue to flow in order not to disrupt the oil production. Interim arrangements have been reached for the continued sale and delivery of the gas in question to El Paso pending judicial review of Opinion No. 737. If Opinion No. 737 is ultimately reversed, the mineral interest owners of the subject leases will demand that the gas which continued to flow to El Paso while the Commission's order was pending appeal must be repaid to them. The gas which El Paso receives under the interim arrangements is part of the supply relied upon by El Paso to serve its customers in interstate commerce. Any repayment of such gas in kind by El Paso to Exxon, Southland, and other mineral interest owners which could even-

[2] Motion of Exxon Corporation for Inclusion of Protective Order, Docket Nos. CP75-209 and CI75-594 (filed July 2, 1975).

[3] Answer of El Paso Natural Gas Company to Motion of Exxon Corporation for Inclusion of Protective Order, Docket Nos. CP75-209 and CI75-594 (filed July 10, 1975).

tuate from a court reversal of Opinion No. 737 would have to be accomplished with gas made available by the curtailment of El Paso's interstate customers. It is vital that no uncertainty exist regarding the procedures to be followed by El Paso should it ultimately be required to repay gas to Exxon, Southland, and the other mineral interest owners. The protective language urged by El Paso in its answer to Exxon's motion directly dealt with this matter. The Commission in Opinion No. 737 denied Exxon's motion for inclusion of such protective language and El Paso is therefore aggrieved by the Commission's Opinion No. 737, and submits that the Commission, upon rehearing of Opinion No. 737, should include in its order on rehearing such protective language. In particular, if the Commission modifies or reverses on rehearing Opinion No. 737, the following language should be included in the Commission's order:

> "If Southland Royalty Company ("Southland"), Exxon, and the other mineral interest owners should determine not to make sales of their production to El Paso and should El Paso or any other party decide to seek court review of this order, and if the Commission's determination herein should be reversed upon review and the gas be held to have been dedicated to El Paso, then Southland, Exxon, and the other mineral interest owners shall be required to repay to El Paso, subject to further Commission order, volumes of gas, in an equitable manner over a reasonable period of time, equal to those which should have been delivered to El Paso from the subject properties from the date the interest owners cease deliveries to El Paso until the date deliveries to El Paso are

> required to commence pursuant to final order no longer subject to review."

[513] If the Commission does not modify or reverse on rehearing Opinion No. 737, the following language should be included in any Commission order:

> "If Southland, Exxon, or other mineral interest owners should seek review of this order and upon review it should be ultimately determined that the gas may be sold to others than El Paso without abandonment authority, then any deliveries by Southland, Exxon, or the other mineral interest owners pending such judicial review shall not have constituted a dedication of their gas to the interstate market and acceptance of monies paid for gas delivered pending judicial review shall not prejudice the rights of the mineral interest owners' rights in the premises; further, El Paso shall be required to repay Southland, Exxon, and the other mineral interest owners in gas for the deliveries made to it pending judicial review. Such repayment is to be made by El Paso subject to the following conditions: (a) the pay-back volumes are to be delivered, in an equitable manner over a reasonable period of time, subject to further Commission order as to scheduling but not as to entitlement if El Paso, Southland, Exxon, and the other mineral interest owners cannot agree as to such scheduling, (b) Southland, Exxon, and the other mineral interest owners shall return to El Paso the monies paid for deliveries made pending judicial review, such repayments to be made within thirty (30) days following the end of each

calendar month during which payback volumes are delivered by El Paso, and (c) the pay-back volumes shall not be considered to be jurisdictional gas and acceptance thereof by Southland, Exxon, or the other mineral interest owners, or any of their customers, shall not subject any of them to Commission jurisdiction."

III.

The United States Court of Appeals for the Fifth Circuit entered on July 14, 1975, in *Southland Royalty Company* v. *Federal Power Commission,* No. 75-2851, an Order Providing Interim Protective Order incorporating the second part of El Paso's above proposed language. Inasmuch as the Court's order states that the "FPC has represented that it does not concede that the Court has jurisdiction to enter a protective [514] order," the Court's order does not contain the first part of El Paso's proposed language, and the Court's order is of limited duration, El Paso submits the Court's order does not foreclose the need for Commission action in providing protective language herein.

WHEREFORE, El Paso Natural Gas Company respectfully submits that rehearing of Opinion No. 737 should be granted and that, upon rehearing, said Opinion should be amended in the manner set forth herein.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[517] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Application of Gulf Oil Corporation for Rehearing

GULF OIL CORPORATION (Gulf) pursuant to Section 19(a) of the Natural Gas Act (15 U.S.C. 717) and Section 1.34 of the Commission's Rules of Practice and Procedure applies for a rehearing of the Commission's Opinion No. 737 entitled "Declaratory Opinion and Order on Termination of Long-Term Leases" issued July 11, 1975 in the above Dockets. The grounds of this Application are:

THE COMMISSION ERRED IN HOLDING THAT GULF MAY NOT, WITHOUT PRIOR COMMISSION PERMISSION AND APPROVAL, REDUCE ITS SALES TO EL PASO NATURAL GAS COMPANY (El Paso) FROM THE WADDELL PLANT WHICH ARE ATTRIBUTABLE TO GAS OWNED BY THE REVERSIONARY MINERAL OWNERS, AFTER TERMINATION OF THE FIXED TERM LEASES ON JULY 14, 1975.

THE COMMISSION ERRED IN HOLDING THAT GULF MUST OBTAIN ABANDONMENT APPROVAL TO CEASE SALES FROM ITS GOLDSMITH LEASE TO PHILLIPS PETROLEUM COMPANY (Phillips) AFTER TERMINATION OF THAT LEASE ON AUGUST 7, 1975.

In its opinion the Commission makes the surprising statement that it has "discovered no case directly in point." (p. 5, Op. 737) It would be difficult to find one case more apropos to another than the facts, rationale and decision in the *Bass* case[1] are to this proceeding. [518] The Commission's distinctions of the *Bass* case are specious at best. The Commission should either follow it or overrule it. Furthermore, as we shall show, the principles of *Bass* as enumerated by the Commission, are inescapable in their application here. The mere transposition of names in the Commission's language in *Bass* serves to demonstrate the point:

> "The thrust of El Paso's argument is that El Paso in some manner acquired a right to purchase that which Shell (Gulf) had *no right to sell*. We will not so alter the basic property rights of mineral owners through the fiction of Section 7(b) application." (p. 9, Op. 638)[2]

It goes without saying that Gulf had no right to sell the gas which reverted to the mineral owners on July 14, 1975. As a matter of fact Shell did have the power, *before the farmout,* to authorize Bass to commit the entire lease, even though it did not do so. Gulf never even had this power. The Commission in *Bass* continued:

> "El Paso is charged with *notice of the limitations* on Shell's power to contract, for such limitations preceded the Shell-El Paso agreement by seven years and were express in the very instru-

[1] *El Paso v. Bass, Opinion* No. 638, 48 FPC 1269 (1972).

[2] All emphasis in the brief is added.

ment which marked Shell's inception of title, the 1956 farmout agreement. We note that the Shell-El Paso gas contract did not purport to cover any gas save that produced from 'the properties owned by Shell.' In law, Shell contemplated selling, and El Paso contemplated buying, Shell's gas." (p. 9, Op. 638)

El Paso knew, or should have known, of the limitations in Gulf's lease since it was of record. Furthermore, Gulf's sale to El Paso was specifically limited to the residue gas Gulf owned and had available for sale from the Waddell Plant, which after July 14, 1975, did not include the reversionary mineral owners' gas. Obviously, in law, Gulf contemplated selling and El Paso contemplated buying only the gas Gulf had for sale at the Waddell Plant, not gas of other parties in which Gulf has no interest.

The Commission's attempts to distinguish the *Bass* case are spurious. The Commission first said:

> "The *Bass* case, which did not involve the diversion of gas from interstate commerce, likewise does not alter our result." (p. 7, Op. 737)

[519] This sentence leaves for the imagination whether the Commission intended the reference to the diversion of gas from interstate commerce as a legal distinction, or merely a commentary. If the former was intended, it is clearly invalid. The necessity for compliance with the requirements of Section 7(b) is unrelated to whether the proposed new sale is in inter- or intra-state commerce. If the Section is applicable at all, it applies as the Commission many times has

held, to any change from one buyer to another. In fact, in *Warren Petroleum Corporation* v. *Sun Oil Company*[1] the Commission held that Section 7(b) applied to a new sale by a producer, even though the gas was ultimately delivered to the same pipeline company previously purchasing the same gas from the processor.

In the next sentence the Commission's second so-called distinction is:

> "There [the *Bass* case] the lessee, Shell, by means of its contract with El Paso, plainly intended to provide a service based upon the dedication of its interest in the leasehold, not the interest of Bass, who had the right to receive a ½ working interest in lieu of his royalty." (p. 7, Op. 737)

To be a distinction, the Commission must have assumed that Gulf intended to provide a service to El Paso based on the dedication not only of its interest, but also of the interests of the reversionary mineral owners after the termination of the lease. Nothing in Gulf's contracts with El Paso or Phillips would support any such assumption. As pointed out above, Gulf contracted to sell to El Paso *only* the residue gas it had available for sale, which could not include mineral owner gas it did not own. The term provision of Gulf's contract with Phillips specifically provided that the contract terminated with the termination of the leases, so the contract did not contemplate a sale of a greater interest than Gulf owned.

Furthermore, if Gulf had attempted to dedicate to El Paso a greater interest than it owned, such a dedi-

[1] RI71-970; CI-788; and CI72-156. Order dated October 25, 1972, affirming Examiner's Decision dated June 21, 1972.

cation would have been a nullity. The Commission recognized this lack of authority in *Bass* when it stated:

> "*Neither party* can be heard to say that the gas contract can function to impair the pre-existing title of Bass, [520] who was not a party to the gas contract and who could not have prevented its execution." (p. 9, Op. 638)

If El Paso could not be heard to say that its gas contract with Shell could not impair the pre-existing title of Bass, how can the Commission here say that Gulf's contract can impair the pre-existing title of the mineral owners? Bass' interest in the lease came into being through the passage of time and the recoupment by Shell of its expenditures. The title of the reversionary mineral owners in this case came into being solely through the passage of time. The Commission's next sentence in *Bass* is so obviously right in principle, and clearly applicable here as to be controlling in this case:

> "El Paso's rights to purchase gas from the James Ranch Well *can rise no higher than Shell's rights to sell that gas*, yet El Paso seeks that result by its claim that it is entitled to purchase Bass' gas until this Commission orders otherwise." (p. 9, Op. 638)

If El Paso's rights to purchase the James Ranch Well can rise no higher than Shell's right to sell, how can El Paso's right to purchase the gas from the Waddell Ranch lease rise higher than Gulf's right to sell that gas? The principles which the Commission found so clearly applicable in *Bass* it now ignores, or avoids

by spurious distinctions. The last attempted distinction is an illustration:

> "The interstate dedication [in *Bass*] thus covered only part of the leasehold, while here the leaseholds were wholly dedicated to interstate commerce." (p. 7, Op. 737)

This is perhaps the most unworthy distinction of all. In effect, it says that a dedication by the owner of a part of a leasehold is necessarily limited to the interest which it owns, while the dedication of a leasehold owned in its entirety extends beyond the lease to interests not owned by the leaseholder. The legal principle which precludes a dedicator from dedicating beyond his ownership is as applicable to interests coming into existence after the termination of a lease as it is to interests coming into existence during the term of the lease as in *Bass*. The difference is no legal distinction.

The last comment on *Bass* is no distinction at all, but merely semi-concession of the relevancy of the *Bass* case. The Commission said:

> "In any case, we believe that the *broad language* used in *Bass* should be confined to the facts of the case and *not extended to the difficult situation here involved.*" (p. 7, Op. 737)

[521] No explanation is made of what "broad language" in the *Bass* case the Commission considered should be "confined to the facts of the case." The fact is that the principles in *Bass* are so obviously applicable here, and are stated so clearly in that opinion that the Commission is forced to resort to spurious distinc-

tions and broad unexplained generalizations to avoid reaching the same result.

Nor does the Commission give any explanation as to what it considered to be the "difficult situation here involved" that caused it to ignore *Bass*. The situation may be difficult for El Paso, but the facts are so uncomplicated they were agreed to by all the parties. We suspect that the real difficulty here is that the reversionary mineral interest owners have sold their gas in the intrastate market. This may be a regrettable illustration of the incapability of interstate pipelines to compete for gas with intrastate buyers because of restraints imposed by the Commission's rate orders, but it has no relevance to any legal issue in this proceeding. The Commission cannot rewrite the statute to conform to its concept of the authority it believes it should, but does not, have.

As recently as May 14, 1975,[4] the Commission reaffirmed the basic principles of *Bass* in language which, applied here, demonstrates the Commission's error in this proceeding. In *Blair-Vreeland* the Commission said:

> "'. . . In Bass *the question was not what Bass could bestow on Shell,* but *what Bass in fact did bestow* [on Shell] by way of a farmout agreement.'" (p. 4, Op. 724-A)

The reversionary mineral interest owners here *could have, but did not,* bestow on Gulf the right to commit their interests after termination of the leases. In affirming the principles of *Bass* on May 14, 1975, that a

[4] *Blair-Vreland,* CI74-331, Opinion No. 724-A.

gas seller may not dedicate beyond his ownership the Commission showed no indication that it believed that the "broad language" of *Bass* should be confined to its facts. In any event, as we have pointed out, the facts here are so similar to those in *Bass* that no valid distinction can be made. The Commission must either overrule *Bass* and the principles on which it is grounded, or modify its decision here to recognize the inapplicability of the abandonment provisions of the Act.

One further comment is necessary. With regard to Gulf's sale of the surplus residue gas from the Waddell Plant, the Commission states:

> "In our opinion the Commission did not intend [in Sec. [522] 154.91(e) of the Regulations] to exempt plant operators from the requirement that they apply under Section 7(b) for abandonment of their sale *to the extent that the sale has been reduced by a substantial and permanent loss of supply.* Therefore the two plant operators Gulf (Warren) and Phillips should make applications under Section 7(b) if they lose termination of the 50-year leases."

Gulf does not contend that Section 7(b) does not apply to its sales of surplus residue gas from the Waddell Plant. It does contend, however, that it has not abandoned any part of its sale or service obligation under the contract simply because it no longer owns a portion of the gas which it previously owned under the Waddell leases. Gulf's contract with El Paso, certified by the Commission, did not dedicate any particular lease. It was limited to "surplus residue gas avail-

able for sale" from the Waddell Plant. Obviously gas which Gulf never owned cannot fall within that category.

Conclusion

It is submitted that the Commission erred in holding that Gulf was required to secure abandonment approval for discontinuing deliveries of gas which reverted to the mineral owners after termination of the Waddell Leases on July 14, 1975 and the Goldsmith Lease on August 7, 1975.

Respectfully submitted,

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Attorneys for Gulf Oil Corporation

Dated: August 8, 1975

[523] (Verification Omitted in Printing)

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(Certificate of Service Omitted in Printing)

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[524] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket Nos. CP75-209
and CI75-594

El Paso Natural Gas Co.
and Texaco, Inc.

(Received August 13, 1975)

Application of Mobil Oil Corporation, Intervenor, for Rehearing of Opinion No. 737

Mobil Oil Corporation (Mobil), Intervenor in the above captioned proceedings, pursuant to Section 19(a) of the Natural Gas Act (Act)[1] and Section 1.34 of the Federal Power Commission's (Commission) Rules of Practice and Procedure hereby files its Application for Rehearing of Opinion No. 737 issued by the Commission at Docket Nos. CP75-209 and CI75-594 on July 11, 1975, and in support thereof shows:

I.

Specification of Errors

A. The Commission has erred in finding that reversionary Mineral Interest Owners are subject to the Commission's jurisdiction under the Act.

B. The Commission has erred in finding that reversionary Mineral Interest Owners must file an application for abandonment pursuant to Section

[1] 15 USC § 717.

7(b) of the Act with respect to sales of gas made by a previous Lessee.

C. The Commission has erred in finding that gas sold in interstate commerce by a Lessee, under a limited-term lease prior to its expiration, committed all gas reserves underlying the said lease to interstate commerce for an indefinite term.

D. The Commission's order is unlawful in that it deprives the reversionary Mineral Interest Owners of their property without due process of law in violation of the Constitution of the U. S.

[525] II.

ARGUMENTS IN SUPPORT OF SPECIFIED ERRORS

A. The Commission has erred in finding that reversionary Mineral Interest Owners are subject to the Commission's jurisdiction under the Act.

It has been well established that the Commission's jurisdiction under the Act does not attach to a sale of gas in interstate commerce until that sale is commenced. Mobil, as one of the reversionary Mineral Interest Owners, has never made a sale of its share of gas reserves from any of the leases described in the contract between Gulf Oil Corporation (Gulf) and El Paso Natural Gas Company (El Paso) which was the subject of this proceeding.

Prior to obtaining its reversionary mineral interest in such gas reserves at the expiration of Gulf's 50-year fixed-term lease agreement, Mobil was at all times a royalty interest owner as to the sale of gas which was made by Gulf to El Paso. Despite the ef-

forts, previously to extend its jurisdiction to royalty owners, and in this case to reversionary mineral interest owners, in the name of "public interest" the court has held in *Mobil Oil Corporation* v. *FPC,* 482 F.2d 256 (D. C. Cir., 1972), that Congress did not give the Commission such authority under the Act. Therefore, the Commission has erred in finding that Mobil, as a reversionary mineral interest owner, in the said gas reserves, is subject to the Commission's jurisdiction under the Act and amenable to such regulations in respect of Mobil's sale of gas from such remaining reserves.

In further support of this argument, Mobil hereby adopts and incorporates by reference the arguments of Section II of Exxon's Initial Brief in this proceeding dated June 25, 1975, and Section II(B) of the Initial Brief of Mineral Interest Owners dated June 20, 1975.

B. The Commission has erred in finding that reversionary Mineral Interest Owners must file an application for abandonment pursuant to Section 7(b) of the Act with respect to sales of gas made by a previous Lessee.

Section 7(b) of the Act provides that:

"No natural gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission or any service rendered by means of such facilities without the permission [526] and approval of the Commission first had and obtained, and after due hearing, and a finding by the Commission that the available

supply of natural gas is depleted to the extent that continuation of service is unwarranted or that the present or future public convenience or necessity permits such abandonment."

Section 2(6) defines "Natural Gas Company" as

". . . a person engaged in the transportation of natural gas in interstate commerce, or sale in interstate commerce of such gas for resale."

Since Mobil has never made a sale of gas from the reserves attributable to its reversionary mineral interest, then Mobil is not a natural gas company within the meaning of the Act and is not required by Section 7(b) of the Act to file an abandonment as therein provided.

In further support of this argument, Mobil hereby adopts and incorporates by reference, the arguments contained in Section II(B) of the Initial Brief of Mineral Interest Owners filed June 20, 1975; the arguments of Section (A) of the Reply Brief of Mineral Interest filed June 24, 1975, and Section II of the Reply Brief of Exxon Corporation filed June 25, 1975.

C. The Commission has erred in finding that gas sold in interstate commerce by a Lessee, under a limited-term lease prior to its expiration, committed all gas reserves underlying the said lease to interstate commerce for an indefinite term.

The Commission's holding in *El Paso Natural Gas Company* v. *Perry R. Bass*, 48 FPC 1269 (1962), that the delivery of gas by the lessee in interstate com-

merce does not impair the rights of the mineral owner to market its gas is clearly applicable to the facts in this case, and the Commission's arbitrary refusal to follow its prior holding in *Bass* in deciding this case is discriminatory and unlawful.

If Shell's dedication of gas to El Paso in the *Bass* case did not dedicate the gas to which Bass had a right to El Paso, as a result of Bass converting a royalty interest to a working interest, then *a fortori* the gas reserves which Mobil owns as a reversionary mineral interest owner were not dedicated to El Paso by Gulf under the lease in which is now expired. Gulf unequivocably stated that it did not purport [527] to dedicate gas to El Paso which it would not own after the expiration of the lease; and that had it attempted to do so, such dedication would have been ineffective as a matter of law. This statement should have been dispositive of this entire matter, and it is clearly error for the Commission to have held otherwise.

In further support of its argument hereof, Mobil hereby adopts and incorporates by reference the Initial Brief of Gulf Oil Corporation dated June 18, 1975, Section III(B), (pages 8-10), of the Initial Brief of Exxon Corporation, dated June 20, 1975, Sections A and B of the Reply Brief of Mineral Interest Owners dated June 24, 1975.

D. The Commission's order is unlawful in that it deprives the reversionary Mineral Interest owners of their property without due process of law in violation of the Constitution of the U. S.

The Commission is in error when it states that the reversioners are not denied of their property without

due process of law. While it is true that the reversioners will be compensated for any continued interstate sales under the Natural Gas Act, the Commission overlooks the fact that by such action, it is forcing the producers to sell gas in interstate commerce at confiscatory rates.

The Supreme Court of the United States has spoken on the matter of confiscation of property by forcing the sale of such property at confiscatory rates in *Smith* v. *Illinois Bell Telephone Company,* 270 US 587, 45 Sup.Ct., ——, —— L.Ed 47, (1926). Absent the Commission's Opinion No. 737, the reversionary Mineral Interest Owners could sell their gas in the intrastate markets at prices based on true-market value; whereas, now they are forced to continue the sale of gas in interstate commerce at regulated rates which are confiscatory and less than the just and reasonable rate for such gas based on the true-market value.

The Commission currently has before it national gas rate proceedings in which consideration will be given to raising the regulated rates to true-market value; however, at this time, the Commission's decision in these proceedings is being delayed by emphasis on other regulatory maters involving gas reserves and responding to congressional inquiries regarding the Commission's regulation of natural gas. Thus, the Commission's action in Opinion No. 737, which forces the sale of the reversioners' gas in interstate commerce while at the same time the Commission continues and [528] unreasonably delays putting an end to confiscatory rates, constitutes a deprivation of property without due process of law which the Su-

preme Court referred to in *Smith* v. *Illinois Bell Telephone Company, supra,* and is in violation of the Constitution of the United States.

WHEREFORE, Mobile Oil Corporation for the reasons hereinbefore set forth respectfully requests the Commission to grant rehearing of its Opinion No. 737 and upon such rehearing, to rescind the ordering provisions of such opinion, and grant such further relief as may be appropriate.

Respectfully submitted,

MOBIL OIL CORPORATION

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Houston, Texas
August 11, 1975

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[531] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

OPINION No. 737-A

Docket No. CP75-209

El Paso Natural Gas Company

Docket No. CI75-594

Texaco Inc.

(ISSUED: SEPTEMBER 3, 1975)

Opinion and Order Denying Rehearing but Adopting Per Curiam

DC-51

[532] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman; William L. Springer and Don S. Smith.

Docket No. CP75-209

El Paso Natural Gas Company

Docket No. CI75-594

Texaco Inc.

OPINION No. 737-A

(ISSUED SEPTEMBER 3, 1975)

Opinion and Order Denying Rehearing but Adopting Per Curiam

Texaco Inc. on August 4, 1975, a group of Mineral Interest owners and Exxon Corporation on August 8, 1975, Gulf Oil Corporation (Gulf) and El Paso Natural Gas Company, on August 11, 1975, and Mobile Oil Corporation on August 13, 1975, have filed applications for rehearing of the Commission's Opinion No. 737 and order issued July 18, 1975, in the above-entitled proceedings. In Opinion No. 737 the Commission determined that the various mineral interest owners holding reversionary interests in 50-year leases covering certain gas reserves in Crane County and Ector County, Texas were subject to the dedications made by the leaseholders, Gulf and others,[1] for the

[1] As here used Gulf includes the other leaseholders and predecessors.

sale of the gas in interstate commerce to El Paso Natural Gas Company and that, upon termination of the leases, they might not sell gas in intrastate commerce without obtaining abandonment approval under Section 7(b) of the Natural Gas Act. The Commission also determined that Gulf need not obtain permission to cease sales to Warren Petroleum Company, now a

[533] Docket No. CP75-209
CI75-594

division of Gulf, but that other leasees must do so, and that Gulf must do so with respect to its sales to Phillips Petroleum Company for resale to El Paso. Further, Gulf, formerly Warren, and Phillips may not reduce their sales to El Paso to the extent such sales are attributable to production from the subject property without prior Commission permission.

The applications for rehearing largely involve restatements and amplification of the arguments already made and covered in Opinion No. 737. The mineral interest owners contend that the only service dedicated to interstate commerce was the service of delivering all of the gas attributable to the fixed-term leasehols estates. Just as half of the gas from a well may be dedicated to interstate commerce and half to intrastate commerce here, they say, only the leasehold interests were dedicated to interstate commerce. In our opinion there is a difference. Predecessors of Gulf commenced the service of delivering gas from the reserves here involved to interstate commerce. Gulf could have at the same time commenced delivering part of the gas here involved to intrastate buyers, and we would recognize such an intrastate dedication. Here, however, we are solely concerned with the

service commenced by Gulf to El Paso in interstate commerce. Under Section 7(b) of the Natural Gas Act this service may not be abandoned without the permission of the Commission. Nor, as we said in Opinion No. 737, can this service be discontinued by transfer to a successor interest. For the practical purposes of the Act it makes no difference whether the successors happen to be assignees, purchasers or reversionary interests. While the contractual right to control and sell the reserves here involved has passed from Gulf to the various mineral interests, this does not mean that under the Natural Gas Act the gas flowing in interstate commerce may be diverted to the intrastate market. As said in *Huber Corp.* v. *F.P.C.*, 236 F.2d 550, 558 (CA3 1956), Congressional power to regulate interstate commerce in natural gas includes authority to regulate abandonment of sales.

Several of the applicants for rehearing argue, as they have previously, that *El Paso* v. *Bass*, 43 FPC 1969, Opinion No. 638 (1972) is contrary to our position here. There Bass entered into a farmout agreement with Shell to develop a producing area retaining a 146 overriding royalty with an option to convert it to a ½ working interest. Shell later entered into an agreement to sell gas to El Paso from "seller's interest in wells". Still later Bass exercised his option to convert to a working interest and proposed to sell his share of the gas to another pipeline. The Commission held that Bass might do so without obtaining abandonment authorization.

[534]

The chief differences between the *Bass* situation and the present one is that the Shell sale agreement

pointedly made it clear that Shell was only selling gas from its interest in the properties involved while in the present case Gulf had a long leasehold interest and sold surplus residue gas available from its leasehold properties. To the extent, however, that *Bass* can be said to stand for the proposition that the service initiated by the leaseholder based upon certain gas reserves covered by the lease can be terminated without Commission approval, it is overruled. It should be noted that Bass did not involve the shift of gas reserves from interstate to intrastate commerce and did not involve the public interest in the encouragement of farmouts, and these circumstances, in part, explain the result in *Bass*.

The Mineral Interest Owners, Exxon and Texaco argue variously that we have violated the property law of Texas, the Tenth Amendment to the United States Constitution reserving to the states powers not granted to the Federal Government, and the Fifth Amendment by depriving them of property without due process of law. The essence of the argument appears to be that we are in error in holding that the leaseholders, Gulf *et al.*, had power to encumber the property with the result that the mineral lease owners are forced to enter into an interstate sale against their will. We assume that in 1925, when the leases were made the lease owners did not contemplate that the Natural Gas Act would be enacted with a provision that service might not be abandoned without approval of the Commission. They clearly did contemplate that the leaseholders would drill for oil and gas and sell oil and gas to outside parties, and there was no reason that these sales could not be in interstate com-

merce, and may have had a duty to do so under the facts and law at that time. After the Natural Gas Act was enacted in 1938 and the *Phillips* case[2] was decided in 1954 the interstate sales of gas became subject to FPC jurisdiction. The leaseholders who had a duty to exploit the wells were the appropriate parties to seek FPC certification. Upon the commencement of interstate sales under FPC certification, the sales became imbued with the public interest.[3] The law of Texas preserved for the lease owners [535] their property interest, and we do not change this, but Section 7(b) of the Act will not permit abandonment of interstate sales without our authority once such sales have commenced. The mineral lease owners who entered into a lease that permitted the leaseholders to make interstate sales are not deprived of this property by being required to permit such sales to continue, and they will be compensated under the just and reasonable rates promulgated under the Natural Gas Act.

These considerations, in our opinion, answer the argument of Exxon that it is being forced to make a sale at the termination of Gulf's leasehold interest and that this constitutes an unlawful taking under the Fifth Amendment. The sale of gas was already

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[2] *Phillips Petroleum* v. *Wisconsin*, 347 U.S. 672 (1954).

[3] The lease owners could have intervened in the proceedings granting certificates to Gulf and Phillips Petroleum Co. to sell the gas to El Paso but our records do not reveal that they have done so. See orders dated May 28, 1956, in Docket No. G-7156, September 28, 1956, in Docket No. G-2625, 16 FPC 1440, and February 24, 1958, in Docket No. G13445, 19 FPC 1151. However, the lease owners apparently had no objection to interstate dedication, for they accepted royalties from sales.

being made from the properties here involved before the advent of regulation. Exxon or its predecessors had leased the properties for this purpose. The imposition of regulation did not constitute an unlawful taking. *Nebbia* v. *New York,* 291 U.S. 502 (1939); *F.P.C.* v. *Natural Gas Pipeline Co.,* 315 U.S. 575, 582 (1942). A producer contracting to sell gas in interstate commerce before regulation commences is properly subject to Section 7(b) although he may never have contemplated such a result. See *Harper Oil Co.* v. *F.P.C.,* 284 F.2d 137 (CA10 1960). Here Exxon is not being forced to make an initial sale but is required to conform to the Natural Gas Act when it succeeds to the interest of Gulf.

The Mineral Interest Owners, Exxon and El Paso argue that the Commission should provide protective relief, *pendente lite.* In Opinion No. 737 we discussed a proposal by Exxon that if we required abandonment authorization for the mineral interest owners, as we had, and if it were determined on judicial review that the gas might be sold to others than El Paso without abandonment authority, then any deliveries by the mineral interest owners should not constitute a dedication of their gas to the interstate market, acceptance of monies should not prejudice their right to a different rate, and El Paso should be required to repay them in gas for deliveries made to it during judicial review. However, we determined that it was not for us to include the protective provisions and that the parties should address themselves to the appropriate court.

Since Opinion No. 737, the Mineral Interest Owners on July 14, 1975, obtained a temporary stay of the

Commission's order in the United States Court of Appeals for the Fifth Circuit. As of the same date upon the consent of Southland [536] Royalty Company, et al., Exxon, El Paso and the Commission, the Court issued an Interim Protective Order containing language corresponding to Exxon's proposal set forth here in ordering clause (B). The Court's order provided that it should be effective until a petition for review of the final Commission order on rehearing of Opinion No. 737 is filed in a court of appeals and any concurrently filed motion for stay or protective order is decided by the court of appeals and further judicial review is exhausted. The Court's order noted that the FPC represented that it did not concede that the Court had jurisdiction to enter a protective order in this matter, but in order to settle a controversy inasmuch as the Court had determined to act, the F.P.C. had represented that it believed that the foregoing provisions were the most equitable matter of preserving the status quo, and it would not move to vacate this order.

On August 4, 1975, Southland Royalty Company and El Paso entered into a letter agreement providing protective provisions and other terms for the continued delivery of gas to El Paso. The Mineral Interest Owners explain that due to the large number of people and distances involved the mineral interest owners, other than Southland, have not yet executed a formal document, but have agreed to it in principle.

More specifically, the letter agreement provides that where Southland is compelled to deliver gas to El Paso by Opinion No. 737 or any other order of the Commission or the courts the initial rate shall con-

sist of the higher of 76.5 cents per Mcf plus certain adjustments, 150% of the national rate, or any higher rate that El Paso is permitted to pay. If El Paso is prevented from including this cost of gas in its rates, Southland is to refund to El Paso the amount disallowed. In the event Southland prevails upon rehearing of Opinion No. 737 and delivers gas elsewhere and later it is determined that Southland should have continued to make deliveries to El Paso, there are requirements for the payback of volumes of gas to El Paso. In the event that the Commission's determination in Opinion No. 737 is reversed, and it is determined that the gas could have been sold to others than El Paso, there are requirements for the payback of gas by El Paso to Southland similar to those in the Court order discussed above.

[537]

El Paso and Southland also agree to request the Commission to include protective payback provisions in its order in accordance with the letter agreement and that these protective provisions shall be the sole measure of damages and liability as between El Paso and Southland. Attached to the letter agreement are general terms and conditions for the delivery of gas by Southland and payment thereafter by El Paso.

In our opinion the letter agrement misconceives the legal situation of the parties. Deliveries to El Paso must continue to be made by Gulf and Phillips as before the termination of the leases until new rate filings are made in accordance with the Commission's Regulations substituting Southland, Exxon and other parties for those originally serving El Paso, unless permission is obtained from the Commission to aban-

don the service to El Paso. We observe further that until appropriate rate filings are made by Southland and other mineral interest owners we cannot resolve the issues raised by the agreement of August 4, 1975. Because of the Court order, however, putting in effect protective language to cover the situation where gas deliveries to El Paso continue, we think it appropriate to adopt this same language, as El Paso requests in its application for rehearing, to cover the period until our order becomes final.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Texaco, the Mineral Interest Owners, Exxon, Mobil and Gulf in these proceedings present no facts or legal principles that would warrant any change in or modification of the Commission's Opinion No. 737 and the accompanying order except as provided below.

(2) It is necessary and appropriate in the administration of the Natural Gas Act that the application for rehearing filed by El Paso be granted and that the protective language below be adopted to cover the period until our order becomes final.

The Commission orders:

(A) The applications for rehearing filed by Texaco, the Mineral Interest Owners, Exxon, Mobil, and Gulf are denied; the application for rehearing, filed by El Paso is granted.

[538]

(B) If Southland, Exxon, or any other mineral interest owners should seek review of this order and

upon review it should be ultimately determined that the gas may be sold to others than El Paso without abandonment authority, then any deliveries by Southland, Exxon, or the other mineral interest owners pending such judicial review shall not have constituted a dedication of their gas to the interstate market and acceptance of monies paid for gas delivered pending judicial review shall not prejudice the rights of the mineral interest owners' rights in the premises; further, El Paso shall be required to repay Southland, Exxon, and the other mineral interest owners in gas for the deliveries made to it pending judicial review. Such repayment is to be made by El Paso subject to the following conditions: (a) the pay-back volumes are to be delivered, in an equitable manner over a reasonable period of time, subject to further Commission order as to scheduling but not as to entitlement if El Paso, Southland, Exxon, and the other mineral interest owners cannot agree as to such scheduling, (b) Southland, Exxon, and the other mineral interest owners shall return to El Paso the monies paid for deliveries made pending judicial review, such repayments to be made within thirty (30) days following the end of each calendar month during which pay-back volumes are delivered by El Paso, and (c) the pay-back volumes shall not be considered to be jurisdictional gas and acceptance thereof by Southland, Exxon, or the other mineral owners, or any of their customers, shall not subject any of them to Commission jurisdiction.

By the Commission,
(SEAL)

KENNETH F. PLUMB,
Secretary.

[613]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of

Docket No. CP75-209

El Paso Natural Gas Company

Docket No. CI75-594

Texaco, Inc.

(RECEIVED OCTOBER 6, 1975)

Application of Mineral Interest Owners for Rehearing of Limited Aspects of Opinion No. 737-A

COME NOW Mineral Interest Owners[1] and, pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure and Section 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a), file this Application for Rehearing of Opinion No. 737-A subject to the limitations and reservations hereinafter described.

SPECIFICATION OF ERROR

1. The Commission erred in holding that "deliveries to El Paso must continue to be made by Gulf and Phillips as before the termination of the leases until new rate filings are made in accordance with the Commission's Regulations substituting Southland, Exxon, and other parties for those originally serving El Paso, unless permission is obtained from the Commission to abandon service to El Paso." (memo. p. 6).

[1] Mineral Interest Owners on whose behalf this document is filed were listed on Exhibit A attached to the Mineral Interest Owners' "Initial Brief" in this proceeding.

2. The Commission erred in holding that unidentified issues were raised by the agreement of August 4, 1975 between El Paso and Southland and that such issues cannot be resolved until appropriate rate filings are made.

[614] LIMITATIONS AND RESERVATIONS

In its Opinion No. 737-A, the Federal Power Commission denied the Applications for Rehearing of Opinion 737 filed by Mineral Interest Owners, Texaco, Exxon, Mobil and Gulf. At the same time, the Commission provided for the inclusion in its orders of certain protective language which had been requested by the parties. Mineral Interest Owners continue to believe the Commission erred on Opinion Nos. 672 and 672-A for each and all of the reasons set forth in its Application for Rehearing filed on August 8, 1975. In this regard, Mineral Interest Owners filed on September 5, 1975, a Petition for Review of Opinions 737 and 737-A which has ben assigned No. 75-3373 in the United States Court of Appeals for the Fifth Circuit.[2]

This Application for Rehearing is limited to matters raised for the first time in the Commission's Order on Rehearing in Opinion 737-A and to which Mineral Interest Owners have not previously had an opportunity to respond.[3] By so limiting this Application for

[2] Mineral Interest Owners also filed an interlocutory appeal with the Fifth Circuit on July 13, 1975 in Docket No. 75-2851.

[3] Mineral Interest Owners are well aware that there is no provision in the Natural Gas Act or in the Commission's Rules and Regulations authorizing an application for rehearing of an order denying rehearing. However, the matters complained of herein involved action taken by the Commission for the first time in Opinion 737-A.

Rehearing, Mineral Interest Owners do not in any way concede the correctness of the Commission's decisions in Opinion Nos. 737 and 737-A and expressly state that such opinions are in error for each and all of the reasons set forth in the Mineral Interest Owners' Application for Rehearing filed on August 8, 1975. Accordingly, this application for rehearing is submitted without prejudice to and with full reservation of the rights of Mineral Interest Owners in connection with the petitions to review Opinion Nos. 737 and 737-A pending in the United States Court of Appeals for the Fifth Circuit.

[615] ARGUMENT

A. *Certain Language in Opinion 737-A is Ambiguous and Should be Clarified.*

In their Application for Rehearing of Opinion 737, several of the parties to this proceeding requested the Commission to include appropriate protective provisions in its Order on Rehearing. On page 4 of Opinion 737-A, the Commission began a discussion of the various parties' requests for the inclusion of such protective provisions. The Commission took note that Southland Royalty Company and El Paso had on August 4, 1975, entered into a letter agreement providing for protective provisions and other terms for the delivery of gas to El Paso under compulsion of the Commission's orders in Opinion 737.[4] Mineral Interest

[4] Mineral Interest Owners stated in footnote 58 of its Application for Rehearing that at that time only Southland Royalty Company and El Paso had executed an interim agreement but that it was anticipated that agreements between the remaining Mineral Interest Owners and El Paso would be executed shortly. The re-

Owners appended a copy of the August 4, 1975 letter agreement to their Application for Rehearing and requested that the protective provisions contained therein be adopted by the Commission in its Order on Rehearing.

Following its description of the August 4, 1975 letter agreement, the Commission made the following statement on page 6 of Opinion 737-A:

> In our opinion the letter agreement misconceives the legal situation of the parties. Deliveries to El Paso must continue to be made by Gulf and Phillips as before the termination of the leases until new rate filings are made in accordance with the Commission's regulations substituting Southland, Exxon and other parties for those originally serving El Paso, unless permission is obtained from the Commission to abandon the service to El Paso. We [616] observe further that until appropriate rate filings are made by Southland and other Mineral Interest Owners, we cannot resolve the issues raised by the agreement of August 4, 1975. Because of the court order, however, putting into effect protective language to cover the situation where gas deliveries to El Paso continue, we think it appropriate to adopt this same language, as El Paso requests in its Application for Rehearing to cover the period until our order becomes final.

Mineral Interest Owners are, quite frankly, confused by this paragraph. The second and third sen-

maining Mineral Interest Owners have now executed agreements with El Paso which are in all material respects identical to the August 4, 1975 agreement between Southland and El Paso.

tences of this paragraph seem to state that some sort of rate filing must be made by Mineral Interest Owners in order for Mineral Interest Owners to be paid by El Paso pursuant to the letter agreement. The final sentence in the above-described paragraph, however, seems to negate the conclusions reached in the preceding two sentences when it states that it will adopt protective language proposed by El Paso. Subsequently in Ordering Paragraph (A), the Commission granted El Paso's application for rehearing. In summary, the paragraph seems to say that, although the Commission believes that Mineral Interest Owners would ordinarily be required to make some sort of rate filing, because of existence of the Fifth Circuit's, and now the Commission's, protective order no such rate filings are required.

As small producers under the Commission's Regulations,[5] Mineral Interest Owners do not believe that any rate filings under any circumstances are necessary in order for them to receive payment pursuant to the interim agreements with El Paso.[6] Due to the uncer-

[5] Mineral Interest Owners were issued permanent or temporary small certificates in the following dockets:

Southland Royalty Co.	CS66-114 (permanent)
Trustee under the Estate of Warren Wright, deceased	CS76-33 (temporary)
William Y. Penn *et al.*	CS76-34 (temporary)

[6] El Paso evidently concurred in this viewpoint as evidenced by El Paso's payment to Mineral Interest Owners of all amounts due under the interim agreement of August 4, 1975 for gas delivered between July 14 and July 31, 1975. However, since the issuance of Opinion 737-A, El Paso has suspended all payments for gas delivered by Mineral Interest Owners subsequent to July 31, 1975 under the compulsion of Opinion 737 and the penalties prescribed by the Natural Gas Act.

tainty in the Commission's language, [617] however, Mineral Interest Owners cannot determine whether the Commission intended to require them to make rate filings now or at any time in the future.[7] Mineral Interest Owners believe, therefore, that the above-quoted paragraph from Opinion 737-A should be clarified.

B. *Mineral Interest Owners Are Not Required To Make Rate Filings In Order To Be Paid Pursuant To Their Interim Agreements*

Mineral Interest Owners strongly object to any holding or implication that they are required to make any rate filings with respect to their deliveries to El Paso. Mineral Interest Owners are all small producers as that term is defined in Section 157.40 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 157.40. The Commission has made it clear that small producers are not required to make rate filings. *See* Regulations under the Natural Gas Act, § 157.39, 18. C.F.R. § 157.40.[8]

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[7] The confusion of Mineral Interest Owners also stems from the fact that in Opinion 737-A the Commission granted El Paso's application for rehearing. As noted in footnote 5 *supra*, prior to the issuance of 737-A El Paso had concurred in the position that it was not necessary for Mineral Interest Owners to make any filings with the Commission in order to collect the price specified in the interim agreement dated August 4, 1975.

[8] It is specifically provided under Section 1.39 that the regulations requiring independent producers to make rate filings shall not be applicable to small producers. In the words of this provision:

Applicability of Section 157.23 through 157.30

Sections 157.23 through 157.30 shall be applicable to independent producers as defined in Section 154.91 of this chapter, but with the exception of 157.30, shall not apply to those inde-

[618] Mineral Interest Owners do not believe this conclusion is in any way altered by that part of paragraph (c) of Section 157.40 which provides that the small producer regulations "shall not apply to any jurisdictional sale made by a small producer where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer." Mineral Interest Owners did not "purchase" the reserves attributable to their reversionary fee simple mineral estate. No money or other consideration flowed from Mineral Interest Owners to anyone in exchange for the gas attributable to their reversionary fee simple mineral estate. By like token, no instrument of transfer exists between Mineral Interest Owners and another entity. In short, there does not exist a single factor that would support the conclusion that Mineral Interest Owners "purchased" their reversional fee simple mineral estate from a large producer. There is simply no evidence—much less substantial evidence—or soundly based findings to support the Commission's holding that as small producers, Mineral Interest Owners are required to make new rate filings substituting them for Gulf before they are entitled to collect the price provided in their interim agreement with El Paso dated August 4, 1975.

Even if the Commission should determine that Mineral Interest Owners had, in some sense, "purchased"

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pendent producers who are subject to 157.40.
It is further provided in Section 157.40(c) as follows:

"(c) *Exemption under blanket certificate.* Small producers certificated hereunder shall be authorized to make small producer sales nationwide pursuant to existing and future contracts at the price specified in each such contract."

the gas attributable to their reversionary fee simple estate from a large producer, under the Commission's own orders they would not be required to make any filings. In Order No. 428-B, the Commission made it clear that its blanket exemption of small producers *is* applicable to developed reserves acquired by the small producer prior to the issuance of Order No. 428. In the words of the Commission:

> Finally, the blanket certificate authorization is applicable to jurisdictional sales made by a small producer from gas reserves acquired [619] prior to the issuance of Order No. 428 by the purchase of developed reserves in place from a large producer. The problem sought to be solved in Section 157.40(c) by the exclusion from blanket authorization of sales from certain gas reserves has no applicability to previously acquired reserves.

"Order Modifying Order No. 428 and Denying Applications for Rehearing," 46 F.P.C. 47, 52-53 (Order No. 428-B) (July 15, 1971). Mineral Interest Owners have owned their reversionary interest since long before the issuance of Order 428 on March 18, 1971. As a matter of law, Mineral Interest Owners' reversionary interest has existed as a separate entity since its creation on July 14, 1925.[9]

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[9] *See Haile v. Holtzclaw*, 414 S.W.2d 916, 924 (Tex. 1967); *Union Electric Co. v. Slay Bulk Terminals, Inc.*, 475 S.W.2d 136 (Mo. Ct. App—St. Louis 1971); *Glenn v. Holt*, 229 S.W. 684 (Tex. Civ. App.—El Paso, 1921, no writ history); *Haby v. Stanolin Oil & Gas Co.*, 228 F.2d 298, 305, 5th Cir. 1955); *Katz v. Bakke*, 265 S.W.2d 686 (Tex. Civ. App.—San Antonio 1954. error ref'd.) Simes & Smith, THE LAW OF FUTURE INTERESTS, § 82 at page 65 (2nd edition 1956).

As a matter of policy, there is likewise no reason why small producer treatment should not be extended to the gas attributable to Mineral Interest Owners' reversionary fee simple mineral estate. It is clear from Order Nos. 428 and 428-B that the Commission was concerned with and wished to preclude large producers from avoiding regulation and receiving a higher price for their gas by selling developed reserves in place to small producers.[10]

In the case of Mineral Interest Owners, there is no question that their reversionary fee simple estate was not "purchased" in order for a large producer to circumvent [620] regulation. Indeed, Mineral Interest Owners' rights existed long before the existence of any small producer regulations. Gulf did not, of course, "sell" anything to Mineral Interest Owners in order to avoid regulation or to receive a higher price for its

---

[10] In order No. 428, the Commission gave the following reason for not exempting developed reserves acquired from large producers:

> The New York Commission contends that the proposed exemption may open the way for large producers to sell their gas in interstate commerce free from Commission regulation by selling their reserves in place to small producers, who would in turn resell the reserves under a conventional (exempt) sales contract to an interstate pipeline. To forestall this possibility, we shall provide that the exemption authorization here for small producers shall not apply to jurisdictional sales made by them for the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer. In such circumstances, the small producer will be required to obtain separate certificate authorization.

"Order Establishing Blanket Certificate Procedure for Small Producer Sales and Providing Relief from Detailed Filing Requirement," 45 F.P.C. 454, 455-456 (Order No. 428) (Mar. 18, 1971).

gas than it would have otherwise been entitled to receive.

Mineral Interest Owners firmly believe that, even if it is ultimately determined that they must make deliveries of their gas in interstate commerce, no rate filings are required for them to receive and collect the price prescribed in the interim agreement of August 4, 1975. This conclusion was apparently concurred in by El Paso, who can hardly be considered an ally of Mineral Interest Owners in this proceeding, since it has never once been suggested by El Paso that rate filings would be required of Mineral Interest Owners.[11] Under the compulsion of Opinion 737-A and in order to protect their interests, however, Mineral Interest Owners are, contemporaneous with the filing of this Application for Rehearing, filing rate schedules with respect to each of the interim agreements entered into between the various Mineral Interest Owners and El Paso. These rate [621] filings are being made under protest and with the express reservation that they are without prejudice to this application for rehearing and the petition for review will be withdrawn in the event the Commission orders on rehearing that no rate filings need be made by Mineral Interest Owners. Mineral Interest Owners are also filing a motion with these rate schedules requesting the Commission file these rate schedules *nunc pro tunc* as of July 14, 1975.

Conclusion

For each and all of the foregoing reasons, Mineral Interest Owners respectfully pray that the Commission grant this Application for Rehearing of Opinion 737-A

[11] See footnote 6, *Supra*.

in accordance with the grounds and reasons set forth above and upon rehearing issue an order declaring that Mineral Interest Owners are not obligated to make any rate filings with respect to deliveries to El Paso of casinghead gas attributable to Mineral Interest Owners' fee simple mineral estate in certain properties located in Crane County, Texas.

Respectfully submitted,

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Date: October 2, 1975

[622] (Verification Omitted in Printing)

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[623]
(Certificate of Service Omitted in Printing)

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[624] UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

Response of Texaco Inc. to Application of Mineral Interest Owners for Rehearing of Limited Aspects of Opinion No. 737-A

Texaco Inc. (Texaco), pursuant to Section 1.9 of the Rules of Practice and Procedure [1] hereby files its response to the application of Mineral Interest Owners for rehearing of limited aspects of Opinion No. 737-A filed October 2, 1975 in these proceedings.

Mineral Interest Owners seek, *inter alia,* to have clarified certain language appearing at page 6 of Opinion No. 737-A issued September 3, 1975 which reads as follows:

> "In our opinion the letter agreement misconceives the legal situation of the parties. Deliveries to El Paso must continue to be made by Gulf and Phillips as before the termination of the leases until new rate filings are made in accordance with the Commission's Regulations

[1] Mineral Interest Owners recognize that the Commission's Rules do not provide for an application for rehearing of an order denying rehearing. Section 1.34 of the Commission's Rules also do not provide for response to an application for rehearing. However, should the Commission characterize Mineral Interest Owners' pleading as a petition for clarification or reconsideration, responses are appropriate under Section 1.9 of the Commission's Rules.

> substituting Southland, Exxon and other parties [625] for those originally serving El Paso, unless permission is obtained from the Commission to abandon the service to El Paso. We observe further that until appropriate rate filings are made by Southland and other mineral interest owners we cannot resolve the issues raised by the agreement of August 4, 1975. Because of the Court order, however, putting in effect protective language to cover the situation where gas deliveries to El Paso continue, we think it appropriate to adopt this same language, as El Paso requests in its application for rehearing, to cover the period until our order becomes final."

In its pleading (pp. 3-5) Mineral Interest Owners note that the Commission in this paragraph expresses its opinion that without rate schedule filings by the Mineral Interest Owners, Exxon Corporation (Exxon) and Texaco, the prior sales by Phillips Petroleum Company (El Paso) are still in existence. The Commission, however, also granted El Paso's application for rehearing and provides in Ordering Paragraph (B) in Opinion No. 737-A for protective relief to the Mineral Interest Owners, Exxon and Texaco as had the United States Court of Appeals for the Fifth Circuit earlier in these proceedings.

Like the Mineral Interest Owners, Texaco views the protective orders issued by the court and now by the Commission as having effectively stayed the jurisdictional findings of Opinion Nos. 737 and 737-A which would otherwise require filings by Texaco and the other producers. The protective language adopted

by both the court and the Commission clearly indicates that the gas at issue can be delivered to El Paso by Texaco, and the other affected parties, during the pendency of review of these orders without jurisdictional projudice to any party's position on the merits. Procedures are provided for the return of [626] gas to Texaco and the other parties in the event that their position that said gas has not been committed to interstate commerce is affirmed ultimately upon judicial review. The order also contemplates that a price will be applied to volumes delivered to El Paso during judicial review, and the return of such volumes to the producers if they are ultimately successful.

In these circumstances Texaco believes that the Commission's Opinion No. 737-A does not require the formal filing of its interim agreement with El Paso which Texaco and El Paso executed in order to implement the protective relief provisions first granted by the court of appeals. This protective relief was explicitly granted to maintain the *status quo* between the various parties and the Commission, preventing *all* from asserting their respective positions during the pendency of this proceeding. For the Commission to begin now to regulate these sales by requiring rate schedule filings is contrary to the spirit and expressed purpose of such protective relief.

Because Texaco recognizes the ambiguity in the above-quoted language of the Commission, however, Texaco is contemporaneously forwarding to the Commission a copy of the interim agreement which it has made with El Paso in implementation of the protective relief provisions of the court and now the Commission. Texaco continues in its position that the

Commission erred in Opinion Nos. 737 and 737-A and has sought judicial review of the Commission's opinions, which proceeding is presently pending in the United States Court of Appeals for the Fifth Circuit, No. 75-3682. By providing the Commission with this agreement Texaco in no way concedes that the Commission has any regulatory jurisdiction in these premises.

If contrary to the above, the Commission concludes that Opinion No. 737-A compels Texaco to make a *pro forma* rate schedule filing, then Texaco, in order to protect its interests, requests that its interim agreement be deemed effective *nunc pro tunc* as of August 8, 1975, the day Texaco's interest in the gas in question arose. In these circumstances, such filing is made under protest and duress and without prejudice to any action Texaco may take in any appropriate court of law.

[627] CONCLUSION

For the reasons stated above, Texaco supports the position stated by Mineral Interest Owners in its October 2, 1975 pleading with respect to the proper interpretation of the above-quoted language of Opinion No. 737-A relating to rate schedule filings and the effect of the Commission's protective relief granted therein.

Respectfully submitted,

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Kirk W. Weinert
Attorney for Texaco Inc.

Houston, Texas
October 17, 1975

[628] (VERIFICATION OMITTED IN PRINTING)

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[629]

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

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[630] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Richard L. Dunham, Chairman; William L. Springer, Don S. Smith, and John H. Holloman III.

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(ISSUED OCTOBER 31, 1975)

Order Granting Rehearing for Purposes of Further Consideration on Limited Issues Relating to Filing Requirements

Mineral Interest Owners[1] on October 3, 1975, filed an application for rehearing with respect to the Commission's Opinion No. 737-A and Order issued September 3, 1975. They contend that the Commission in Opinion No. 737-A erred in holding that deliveries to El Paso must continue to be made by leaseholders Gulf and Phillips until new rate filings are made by Southland, Exxon and other parties unless permission is obtained to abandon service and that the Commission erred in holding that issues were raised by the agreement of August 4, 1975, between El Paso and Southland and cannot be resolved until appropriate rate filings are made.

---

[1] Southland Royalty Company, William Y. Penn, *et al.*, Trustees, Nancy Elizabeth Penson, Penn Resources, Inc., Elizabeth Hudson Penn, Trustees under the will of Warren Wright deceased.

On October 20, 1975, Texaco Inc. purportedly pursuant to Section 1.9 of the Commission's Rules of Practice and Procedure filed a response to the application of the Mineral Interest Owners for rehearing. Our rules do not permit answers to petitions for rehearing (see Section 1.34(d)), but since Texaco's response takes issue with Opinion No. 737-A rather than the Mineral Interest Owners, we shall consider it an application for reconsideration.

We shall grant rehearing for purposes of further consideration to Mineral Interest Owners and shall defer consideration of Texaco's application for reconsideration.

[631] We grant rehearing for the purpose of further consideration only inasmuch as the record in this case has been docketed in the Fifth Circuit Court of Appeals, depriving us of jurisdiction to modify the orders under review. We have instructed our Solicitor to seek remand of the record for the limited purpose of considering the issues presented by the pending applications for rehearing and reconsideration.

The Commission finds:

The Application for Rehearing filed by Mineral Interest Owners on October 3, 1975, should be granted for further consideration and consideration of Texaco's application should be deferred.

The Commission orders:

The Application for Rehearing filed by Mineral Interest Owners on October 3, 1975, is hereby granted for further consideration on the limited issues re-

ferred to above, and consideration of Texaco's application is deferred.

By the Commission.

(SEAL)

KENNETH F. PLUMB,
Secretary.

[632] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

OPINION No. 737-B

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(ISSUED: DECEMBER 18, 1975)

DC-51

Opinion and Order Granting Rehearing on Limited Issue Relating to Filing Requirements

[633] UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Richard L. Dunham, Chairman; Don S. Smith, John H. Holloman III, and James G. Watt.

OPINION No. 737-B

Docket No. CP75-209

EL PASO NATURAL GAS COMPANY

Docket No. CI75-594

TEXACO INC.

(Issued December 18, 1975)

Opinion and Order Granting Rehearing on Limited Issue Relating to Filing Requirements

PER CURIAM:

Mineral Interest owners[1] on October 3, 1975, filed an application for rehearing with respect to the Commission's Opinion No. 737-A and Order issued September 3, 1975. In that Opinion the Commission denied rehearing of Opinion No. 737 but adopted protective relief in case the Commission's order was reversed on appeal. In Opinion No. 737 the Commission determined that owners holding reversionary interests in certain gas reserves in Crane and Ector Counties,

[1] Southland Royalty Company (Southland) William Y. Penn, *et al.*, Trustees, Nancy Elizabeth Penson, Penn Resources, Inc., Elizabeth Hudson Penn, Trustees under the will of Warren Wright deceased.

Texas were subject to the dedications made by the leaseholders, Gulf Oil Corporation and others for the sale of gas in interstate commerce to El Paso Natural Gas Company and that, upon termination of the leases, such owners might not sell the dedicated gas in intrastate commerce without obtaining abandonment approval under Section 7(b) of the Natural Gas Act. Mineral Interest Owners contend that the Commission in Opinion No. 737-A erred in holding that deliveries to El Paso must continue to be made by leaseholders Gulf and Phillips until new rate filings are made by Southland, Exxon and other parties unless permission is obtained to abandon service and that the Commission erred in holding that issues were raised by the agreement of August 4, 1975, between El Paso and Southland and cannot be resolved until appropriate rate filings are made.

[634] On October 20, 1975, Texaco Inc. filed a response to the application of the Mineral Interest Owners for rehearing, which we have accepted as an application for reconsideration as explained in our order of October 31, 1975. In that order we granted rehearing for purposes of further consideration inasmuch as the record had been docketed in the United States Court of Appeals for the Fifth Circuit, depriving us of jurisdiction. However, on November 25, 1975, the Court granted the Commission's motion for a limited remand for purposes of further consideration.

As Mineral Interest Owners point out, we took notice of the Southland-El Paso letter agreement providing protective provisions and other terms for the continued delivery of gas to El Paso. We noted particularly that where Southland is compelled to

deliver gas to El Paso by Opinion No. 737 the initial rate would consist of 76.5 cents per Mcf or 150 percent of the national rate. The Mineral Interest Owners object to our concluding language that:

> In our opinion the letter agreement misconceives the legal situation of the parties. Deliveries to El Paso must continue to be made by Gulf and Phillips as before the termination of the leases until new rate filings are made in accordance with the Commission's Regulations substituting Southland, Exxon and other parties for those originally serving El Paso, unless permission is obtained from the Commission to abandon the service to El Paso. We observe further that until appropriate rate filings are made by Southland and other mineral interest owners we cannot resolve the issues raised by the agreement of August 4, 1975. Because of the Court order, however, putting in effect protective language to cover the situation where gas deliveries to El Paso continue, we think it appropriate to adopt this same language, as El Paso requests in its application for rehearing, to cover the period until our order becomes final.

Mineral Interest Owners believe that this language is confusing as to whether they are required to make rate filings. They also contend that as small producers defined in Section 157.40 of the Commission's Regulations they are not required to make any rate filings with respect to their deliveries to El Paso.

[635] Texaco, which is plainly not a small producer but holds a reversionary interest in the Ector County

leasehold, in its application for reconsideration views the protective orders issued by the Court and now by the Commission as having stayed the jurisdictional findings of Opinion Nos. 737 and 737-A, which would otherwise require filings by Texaco and other producers. It notes that the protective language indicates that the gas at issue can be delivered to El Paso by Texaco and other affected parties during the pendency of review without jurisdictional prejudice to any party's position. In these circumstances Texaco believes that the Commission's Opinion No. 737-A does not require the formal filing of its interim agreement with El Paso. We agree with Texaco's reasoning as applied to the period of the Commission and Court stay. Therefore, it is our opinion that it is not required to make rate schedule or certificate filings with respect to sales from its reversionary interest. The same result would apply to Exxon, which holds a reversionary interest in the Crane County leasehold.

With respect to Mineral Interest Owners, regardless of whether they are small producers, it is our opinion that they are likewise not required to make rate schedule and certificate filings with respect to their sales of gas from the reserves here involved because of the protective orders by us and by the Court as agreed by Texaco. Certain of the owners of reversionary interests have made rate schedule filings of their interim agreements with El Paso. These filings would, of course, be unnecessary at this time.

The Commission further finds:

Opinion No. 737-A and Order should be modified in accordance with the above discussion.

The Commission orders:

The applications for rehearing of the Mineral Interest Owners filed October 3, 1975, and for reconsideration of Texaco filed October 20, 1975, are granted in accordance with the above discussion.

By the Commission.

(SEAL)

KENNETH F. PLUMB,
Secretary.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(TITLE OMITTED IN PRINTING)

Reference of the Judgment of the Court of Appeals for the Fifth Circuit

(Dated December 13, 1976)

The Opinion of the Court of Appeals for the Fifth Circuit in this case, 543 F.2d 1134 (5th Cir. 1976), has been reproduced as:

1. Appendix B, pages 2-12, in the Petition for a Writ of Certiorari No. 76-1114, *California, et al.*, v. *Southland Royalty Company, et al.*
2. Appendix B, pages 3a-11a, in the Petition for a Writ of Certiorari No. 76-1133, *El Paso Natural Gas Co.* v. *Southland Royalty Co., et al.*
3. Appendix A, pages 1a-11a, in the Petition for a Writ of Certiorari No. 76-1587, *Federal Power Commission* v. *Southland Royalty Co., et al.*

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(TITLE OMITTED IN PRINTING)

Reference of the Judgment of the Court of Appeals for the Fifth Circuit

(Dated December 13, 1976)

The Judgment of the Court of Appeals for the Fifth Circuit has been reproduced as:

1. Appendix A, in the Petition for a Writ of Certiorari No. 76-1114, *California, et al* v. *Southland Royalty Co., et al.*
2. Appendix A, pages 1a-2a, in the Petition for a Writ of Certiorari No. 76-1133, *El Paso Natural Gas Co.* v. *Southland Royalty Co., et al.*
3. Appendix B, pages 12a-13a, in the Petition for a Writ of Certiorari No. 76-1587, *Federal Power Commission* v. *Southland Royalty Co., et al.*

IN THE
SUPREME COURT OF THE UNITED STATES

76-1114

CALIFORNIA, ET AL. v. SOUTHLAND ROYALTY CO., ET AL.

76-1133

EL PASO NATURAL GAS CO. v.
SOUTHLAND ROYALTY CO., ET AL.

76-1587

FPC v. SOUTHLAND ROYALTY CO., ET AL.

The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument. Mr. Justice Stewart and Mr. Justice Powell took no part in the consideration or decision of these petitions.

[June 27, 1977]

Supreme Court, U. S.
FILED
JUN 3 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1114, 76-1133, 76-1587

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, EL PASO NATURAL GAS COMPANY, THE FEDERAL POWER COMMISSION,
Petitioners,

v.

SOUTHLAND ROYALTY COMPANY, ET AL.,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS SOUTHLAND ROYALTY COMPANY, ET AL. IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1114, 76-1133, 76-1587

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, EL PASO NATURAL GAS COMPANY, THE FEDERAL POWER COMMISSION,
Petitioners,

v.

SOUTHLAND ROYALTY COMPANY, ET AL.,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS SOUTHLAND ROYALTY COMPANY, ET AL. IN OPPOSITION

Respondents Southland Royalty Company, et al. (Southland Royalty)[1] submit the following brief in opposition to the petitions for writs of certiorari which have been filed by El Paso Natural Gas Company (El Paso), California,[2] and the Federal Power Commission (Commission). These

[1] This brief is filed on behalf of the following respondents: Southland Royalty Company; William Y. Penn, et al., Trustees; Nancy Elizabeth Penson; Penn Resources, Inc.; Elizabeth Hudson Penn; the Trustees under the will of Warren Wright; Exxon Corporation; and Texaco Inc.

[2] The People of the State of California and the Public Utilities Commission of the State of California.

petitions[3] seek review of a Fifth Circuit decision that, as a matter of "black letter law", the lessee under a fifty-year fixed-term oil and gas lease could not "legally deal in or dedicate" to interstate commerce natural gas it did not own — the gas owned and produced by the mineral fee owners after the expiration of the lease.

QUESTION PRESENTED

Did the lessee under a fifty-year fixed-term oil and gas lease, by making interstate sales of its leasehold gas, dedicate to interstate commerce gas it did not own — the gas owned and produced by the mineral fee owners after the expiration of the lease?

STATEMENT OF THE CASE

In 1925 Gulf Oil Corporation (Gulf) entered into an oil and gas lease with W. N. Waddell, et al. (the Waddell Lease) covering certain acreage in Crane County, Texas. The lease expressly provided that it "shall not remain in force longer than fifty years from" July 14, 1925, the date of execution of the lease. (J. A. 136).[4]

In 1951 Gulf entered into a contract with El Paso for the sale of "Seller's surplus residue gas" — that is, the gas which Gulf had the right to sell after gas from its various oil and gas leases, including the Waddell Lease, had been processed in Gulf's plant. (J.A. 43). By this contract Gulf did not "purport to dedicate" gas to be produced after the expiration of the Waddell Lease. (J.A. 457-58).

In 1954, following this Court's *Phillips* decision[5], Gulf applied to the Commission for a certificate of public convenience and necessity authorizing its sale of surplus residue gas to El Paso, specifically describing the sale in terms of the 1951 contract (J.A. 2-4). Gulf did not seek a cer-

[3] Hereinafter cited as "El Paso . . .", "Calif. . . .", and "FPC . . ."

[4] Citations in the form "J.A." are to the Joint Appendix in the court below.

[5] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

tificate limited in duration, since Gulf expected to have "Seller's surplus residue gas" available for sale to El Paso from sources other than its Waddell Lease, as it in fact does have.[6] The Commission authorized Gulf's sale "as described in the application." (J.A. 26-27, 33, 37).

In 1973, the Supreme Court of Texas denied Gulf's claim that it had the right to continue beyond July 14, 1975 the production, ownership and sale of hydrocarbons produced from the leased acreage. The Court held that the language of the Waddell Lease provides "a plain and certain answer to the question of when the lease terminates."[7] Accordingly, on July 14, 1975, Gulf's lease terminated by operation of law and Southland Royalty came into present enjoyment of its mineral fee estate.[8]

In January, 1975 El Paso also tried to circumvent the limitations on Gulf's leasehold rights. El Paso petitioned the Commission to require Southland Royalty to sell its gas to El Paso rather than to the intrastate pipeline with which Southland Royalty had contracted.[9] The Commission consolidated El Paso's petition with one filed by Texaco Inc. with respect to its interest in acreage subject to another fifty-year fixed-term lease (the Goldsmith Lease) held by Gulf, which was also about to expire. (J.A. 360-361).[10]

[6] Gas produced from sources other than the Waddell Lease accounted for more than half of the gas sold by Gulf to El Paso. (*See* J.A. 123). Thus, regardless of the expiration of the Waddell Lease, Gulf continues to sell and deliver substantial quantities of "Seller's surplus residue gas" under its contract with El Paso.

[7] *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547, 552 (Tex. 1973).

[8] Southland Royalty Company acquired its share of the mineral fee interest (47%) from the Waddells in 1926, and the other respondents also acquired their interests long before the expiration of Gulf's lease.

[9] Prior to the expiration of Gulf's lease, Southland Royalty had contracted with Intratex Gas Company, an intrastate pipeline serving, *inter alia*, the natural gas distributor for the City of Houston, Texas for the sale of the mineral fee gas, to begin when Southland Royalty came into enjoyment of its interest on July 15, 1975.

[10] The orders of the Commission, the decision of the court below and the petitions herein all concern the Goldsmith Lease as well

By orders issued July 11, 1975 and September 3, 1975 the Commission held that Southland Royalty could not sell its gas to the purchaser of its choice without obtaining abandonment authorization from the Commission under Section 7(b) of the Natural Gas Act, 15 U.S.C. § 717f(b). According to the Commission, Southland Royalty's gas had been dedicated to interstate commerce by Gulf's interstate sale of the gas attributable to Gulf's limited leasehold interest. The Commission recognized that its decision amounted to a "holding that the leaseholders, Gulf, et al., had power to encumber the property with the result that the mineral lease [sic] owners are forced to enter into an interstate sale against their will." (J.A. 712).

On appeal, the Fifth Circuit reversed. *Southland Royalty Co.* v. *FPC*, 543 F.2d 1134 (5th Cir. 1976). The court held that Southland Royalty's gas was not subject to Gulf's interstate dedication of Gulf's leasehold gas.[11] The court rejected the Commission's claim that Gulf was empowered to dedicate Southland Royalty's gas, on the ground that:

> It is black letter law that a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the term of his interest. 2 R. POWELL, THE LAW OF REAL PROPERTY ¶ 247 [1] (Rohan ed. 1967). *See also*, eg., 1 H. TIFFANY, THE LAW OF REAL PROPERTY § 153 (3rd ed. 1939); 2 H. WILLIAMS & C. MEYERS, OIL & GAS LAW § 332 (1975).

543 F.2d at 1137. In this connection, the court noted that Southland Royalty was not a successor to Gulf and therefore Gulf had "no right to encumber or restrict" Southland Royalty's gas. *Id.* at 1138.

as the Waddell Lease, but there are no material differences of fact between the two leases and all parties have discussed the case in terms of the Waddell Lease, as will be done herein.

[11] Contrary to the Commission's statement (FPC 6), the court below did not hold that Southland Royalty could "abandon" interstate sales of gas without Commission authorization. Instead the court held that Southland Royalty's gas had not been dedicated to interstate commerce, 543 F.2d at 1136, so there was nothing for Southland Royalty to "abandon".

California, El Paso and the Commission filed petitions for certiorari. Pending the disposition of these petitions, the Fifth Circuit has deferred issuance of its mandate. As a result, Southland Royalty is involuntarily selling its gas to El Paso under compulsion of the Commission's orders and pursuant to an interim protective order.[12]

REASONS FOR DENYING THE WRITS

Petitioners assert that the question presented is whether Southland Royalty can "withdraw" from interstate commerce gas that has been dedicated by Gulf. They then claim that an affirmative answer violates established construction of the Natural Gas Act and of the abandonment provision of the Interstate Commerce Act, "releases" great quantities of dedicated gas and may have other adverse regulatory consequences. But they misstate the question presented to and decided by the Fifth Circuit — whether Gulf had ever dedicated Southland Royalty's gas.

The court of appeals' decision that Gulf never dedicated Southland Royalty's gas is based on "black letter law" and is fully consistent with the Natural Gas Act cases relied on by the petitioners. Cases construing the abandonment provision of the Interstate Commerce Act, far from conflicting with the decision below, offer additional support for it. The court of appeals' decision will not "release" any dedicated gas or have other adverse consequences. It simply reaffirms, on virtually unique facts, a fundamental principle: no one can legally deal in or dedicate property he does not own.

[12] Contrary to the Commission's statement (FPC 6, fn. 6) these deliveries are not "continuations" of Gulf's deliveries. Southland Royalty's sale is a new sale, and an involuntary one, undertaken expressly "without prejudice" to this litigation, under the terms of a protective order entered by the Fifth Circuit.

1. Petitioners Misstate the Question Presented.

Petitioners all rest their arguments for review on the "fundamental premise of the [Natural Gas] Act that, once gas is dedicated to interstate commerce . . . there can be no withdrawal of that supply from continued interstate movement without Commission approval" under Section 7(b). (FPC 7; *see also* Calif. 8, El Paso 6). Each claims that the decision below "challenges" or "threatens" this fundamental principle, and thereby presents the question of whether Southland Royalty can "withdraw" dedicated gas from interstate commerce, "divert" dedicated gas to intrastate commerce, and "terminate sales" of dedicated gas without abandonment authorization. (FPC 2, El Paso 2, Calif 3).

The problem with this "fundamental premise" is that it is completely irrelevant, and is in no way challenged or threatened by the decision below. The court of appeals was not faced with a question of whether Southland Royalty could withdraw dedicated gas from interstate service. The court was faced with the question of whether Gulf had dedicated Southland Royalty's gas in the first place.[13] The court did not hold that Southland Royalty could withdraw its gas, "once dedicated." It found that Southland Royalty's gas had never been "once dedicated." Accordingly, its decision does not present any question of whether Southland Royalty can "withdraw," "divert," or "terminate sales" of any gas that has once been dedicated. The only question presented is whether Gulf could and did "once dedicate" Southland Royalty's gas — gas that Gulf did not own.

---

[13] The Court stated the question presented as follows:

> Does the lessee under a 50-year fixed-term mineral lease, by making certificated sales of leasehold natural gas in interstate commerce, thereby dedicate to interstate commerce the gas which remains in the ground at the end of the 50th year?

543 F.2d at 1136.

2. The Decision Below Is Consistent With Established Construction of the Natural Gas Act.

The court of appeals properly noted that the question presented was one to which "black letter law" applies: a person holding a present interest in real property, which is limited in duration, cannot create an estate enduring beyond the term of his interest.[14] It follows from this "self-evident principle"[15] that "a person cannot dedicate interests over which he has no control."[16] Thus, "under well established concepts of property law, Gulf could not legally deal in or dedicate" Southland Royalty's gas. 543 F.2d at 1137. Although this case arises in a Texas context, the principles relied on by the court of appeals are not vagaries of local law, but universal principles of Anglo-American jurisprudence.[17]

The Natural Gas Act cases that are said to be "contrary" to these universal principles all stand for the proposition that *once* a producer's gas has been dedicated to interstate commerce, "there can be no withdrawal of that supply from continued interstate movement without Commission approval." *Atlantic Refining Co.* v. *Public Service Commission* [*CATCO*], 360 U.S. 378, 388-89 (1959). As previously noted, Southland Royalty's gas was not "once dedicated". Accordingly, this proposition is simply not relevant, and neither are the cases that petitioners cite for it.[18]

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[14] *See* 543 F.2d at 1137, *citing* 2 R. POWELL, THE LAW OF REAL PROPERTY § 247[1] (Rohan ed. 1967).

[15] 1 H. TIFFANY, THE LAW OF REAL PROPERTY § 153 at 247 (3rd ed. 1939).

[16] 4 H. TIFFANY, THE LAW OF REAL PROPERTY § 1100 (3rd ed. 1975).

[17] Nor (contrary to El Paso's statement, at p. 12) is this decision dependent upon the nature under Texas law of a mineral lessee's property interest. Whether the lessee's interest is deemed realty or personalty, a chattel real or a profit a prendre, he can dedicate only the gas that is attributable to his interest.

[18] *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137 (1960); *Sun Oil Co.* v. *FPC*, 364 U.S. 170 (1960); *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965); *Hunt* v. *FPC*, 306 F.2d 334 (5th Cir. 1962), *rev'd*, 376 U.S. 515 (1964); *Mitchell Energy Corp.* v. *FPC*, 533 F.2d 258 (5th Cir. 1976); *Transcontinental Gas Pipe Line*

Because of the attention petitioners devote to it, a brief review of one of these cases, *Sunray*, may be appropriate, even though the court below specifically addressed and distinguished it. *See* 543 F.2d at 1138. Sunray had applied for a 20-year certificate, to authorize the sale it proposed under a 20-year contract. The Commission tendered a certificate unlimited in duration, which Sunray accepted and under which it commenced deliveries, though challenging the Commission's authority to issue such a certificate. This Court held that the Commission had the power to issue Sunray an unlimited certificate, and that by choosing not to "avail itself of its undoubted right to stand firm on its own application, and reject the proffered certificate," 364 U.S. at 141, Sunray was bound to the terms of the certificate it had accepted. Accordingly, Sunray would have to continue to deliver its gas pursuant to the certificate, once its contract expired. *Id.* at 156.

Petitioners claim that the expiration of Gulf's lease is like the expiration of Sunray's contract (FPC 10-15, Calif. 14-20, El Paso 10-11), but this is plainly wrong. First, as noted by the court of appeals, 543 F.2d at 1135, this Court did not hold that Sunray could dedicate gas it did not own, which is what petitioners assert that Gulf did in this case. Second, unlike Sunray, Southland Royalty has never had an opportunity to "avail itself of its undoubted right" to choose its purchaser in the first instance; on the contrary, the Commission itself has conceded that, under its orders, Southland Royalty would be "subject[ed] to the dedication made by the leaseholders" and thereby "forced to enter into an interstate sale against [its] will." (J.A. 712).

Corp. v. *FPC*, 488 F.2d 1325 (D. C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974); *United Gas Pipe Line Co.* v. *FPC*, 350 F.2d 689 (5th Cir. 1965), *aff'd*, 385 U.S. 83 (1966). In each, it was held that *once* a natural gas company subject to the Commission's jurisdiction had dedicated its gas to interstate commerce, its gas could not be withdrawn without abandonment authorization, regardless of the terms of its contract with its pipeline purchaser or a voluntary assignment of its rights to another producer. In none of these cases, or any other case, did this Court, or any other court, hold that under the Natural Gas Act a producer may dedicate gas it does not own.

3. The Decision Below Is Consistent With Established Construction of the Interstate Commerce Act.

Among the petitioners only the Commission makes a new argument. The Commission first characterizes the decision below as holding that "the reversioners may quit the interstate market without Commission authorization" (FPC 15) under Section 7(b), the abandonment provision of the Natural Gas Act.[19] The Commission then claims that such a decision is contrary to this Court's construction of Section 1(18), the abandonment provision of the Interstate Commerce Act[20] under which the Interstate Commerce Commission (ICC) regulates railroads. Although it was not raised in the orders reversed by the court of appeals and was not presented to that court, this new argument does nothing to disturb the correctness of the decision below.

To begin with, the Commission is simply wrong in asserting that the court below held that Southland Royalty "may quit the interstate market" without authorization under Section 7(b). The question decided below and presented here is whether Gulf dedicated Southland Royalty's gas to the interstate market and thereby made Southland Royalty an involuntary "natural gas company" subject to Section 7(b). It is uncertain how much light cases construing Section 1(18) of the Interstate Commerce Act shed on this question.[21] But when the analogous question was raised in the context of Section 1(18), the result was the same as in the court below — the regulated activities of a lessee do not subject a nonregulated lessor to the agency's jurisdiction.

[19] 15 U.S.C. 717f(b).

[20] 49 U.S.C. 1(18), which was added by Section 402 of the Transportation Act of 1920, 41 Stat. 477-478.

[21] The Commission erroneously claims (FPC 15) that the two sections are "parallel", on the grounds that Section 7(b) "originated with" and was "modeled on" the proposed Benton amendment to H.R. 11662, which Benton said was drawn from Section 1(18). The Benton amendment to H.R. 11662 was never adopted. Section 7(b) actually originated with an earlier bill, H.R. 5423, 74th Cong., 1st Sess., § 305(b), whose language is much closer to that of Section 7(b) than is the language of the Benton amendment. Legislative history aside, the two statutes are plainly not

The leading case is *Meyers* v. *Famous Realty*, 271 F.2d 811 (2nd Cir. 1959), *cert. denied* 362 U.S. 910 (1960). There, in reliance on the two cases[22] cited here by the Commission, it was argued that Famous Realty, the lessor of the realty and tracks formerly used by the Jay Street Railroad, had to "continue" operation of the line. The Second Circuit noted that the grantors in those cases were already themselves "carriers by railroad" subject to ICC jurisdiction when they granted rights to other carriers; as such, they were subject to a "revived obligation" under Section 1(18) with respect to their jurisdictional facilities.[23] However, the court continued, "none of the decisions cited hold or imply that a noncarrier, by merely leasing its properties to a carrier, becomes a 'carrier by railroad'." Accordingly, the court held that Famous Realty had no obligation to continue the Jay Street's operations "when its lease expires." 271 F.2d at 814.[24]

"parallel". Substantial differences between regulation of railroad service and regulation of interstate sales of natural gas are embodied in the jurisdictional provisions of the two acts. *Compare* Interstate Commerce Act Section 1(3) *with* Natural Gas Act Section 1(b).

[22] *Thompson* v. *Texas-Mexican R. Co.*, 328 U.S. 134 (1946) and *Smith* v. *Hoboken R. Co.*, 328 U.S. 123 (1946). The Commission interprets these cases as holding that a private landowner, not otherwise subject to ICC jurisdiction, must "continue" railroad service commenced by an ICC-regulated railroad upon expiration of a lease to the railroad.

[23] That is, *Tex-Mex* and *Smith* were inapposite in *Meyers* (and are inapposite here) because the grantors themselves devoted their properties to interstate service, before granting rights to use the same properties to other "carriers by railroad." The ICC decisions cited by the Commission likewise involve agreements between two "carriers by railroad" with respect to the same tracks, and are equally inapposite. *See Bush Terminal Railroad Co.*, 342 ICC 34 (1971).

[24] Similarly, Judge Friendly, writing for a three-judge panel, recognized that the doctrine of requiring a lessor to obtain a Section 1(18) certificate "applies only when the lessor was a 'carrier by railroad', *see* 49 U.S.C. § 1(18), when the lease was made." *City of New York* v. *U.S.*, 337 F.Supp. 150 (E.D.N.Y. 1972).

Similarly, in the context of the Natural Gas Act, no cases hold or imply that a landowner such as Southland Royalty becomes a "natural gas company" by merely leasing its properties to a "natural gas company" such as Gulf. In fact, it is settled that the lessor of an undeveloped oil and gas lease is not a "natural gas company" subject to Commission jurisdiction under the Natural Gas Act either when it grants a lease or if the lessee then discovers gas and sells it in interstate commerce. The Natural Gas Act simply does not contain "any basis for reaching out to cover the landowner's lease". *Mobil Oil Corp.* v. *FPC*, 463 F.2d 256, 263 (D.C. Cir. 1971), *cert. denied* 406 U.S. 976 (1972).

4. The Decision Below Concerns Virtually Unique Facts of Limited Importance.

The court of appeal's decision is not only manifestly correct, but also plainly limited in its significance. It turns on the express limitations of Gulf's fifty-year fixed-term lease. Such term oil and gas leases are extremely rare, having "long been in disuse" by 1928, and "of no practical importance."[25] For this reason, the decision below is of direct concern only to a handful of other similarly situated parties,[26] and involves only a relatively small amount of natural gas.[27]

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[25] Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas*, 7 TEXAS L. REV. 1, 15 (1928). *See also* 3 H. WILLIAMS, OIL & GAS LAW § 601.1 (1975 ed.); E. BROWN, LAW OF OIL & GAS LEASES § 5.01 (2d ed. 1973).

[26] Although the Commission suggests that "numerous" other fixed-term leases are involved (FPC 19), in fact, as California notes (Calif. 9-10), there are only three other such cases, on which the Fifth Circuit is deferring decision pending the disposition of this case. California and the Commission attempt to create the impression of a larger number of cases by citing separately each order which the Commission has issued with respect to different aspects of these cases, or each of the appeals taken by the parties to them. *See* Calif. 10, fn. 4, FPC 19, fn. 19.

[27] The daily production at issue here is less than 0.08 of 1% of average daily U.S. marketed natural gas in 1975 (calculated from

Virtually all producers of natural gas operate pursuant to leases which continue for a stated primary term *and* "as long thereafter as oil, gas or other minerals are produced [from the subject acreage] in paying quantities."[28] Thus, in the ordinary case, when a lessee commences an interstate sale of leasehold gas, he owns and therefore has the right to sell gas as long as the reserves last.[29] The question in this case — of whether a producer can dedicate gas he does not own — cannot even arise.

Petitioners try to show a need for this Court's review by arguing that the decision below threatens the Commission's jurisdiction over natural gas that has been dedicated to interstate commerce, and its ability to enforce the abandonment provisions of the Natural Gas Act applicable to such dedicated gas. Specifically, they state that it will "release" large quantities of dedicated gas from the interstate market without abandonment authorization. (FPC 6, Calif. 8, El Paso 9). As previously noted, this "argument" merely begs the question presented, which is whether Southland Royalty's gas was ever dedicated.

Petitioners also argue that the decision below should be reviewed because of its potential effect on other pending appeals, especially *Phillips Petroleum Co.* v. *FPC*, 10th Cir. No. 76-1216. In fact, on May 17, 1977, the Tenth Circuit handed down a decision in *Phillips* which confirms the limited scope of the decision below. In affirming Commission orders holding Phillips bound as the "successor" to another

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J.A. 123 and "Natural Gas Production and Consumption: 1975," Bureau of Mines, prepared October 4, 1976). Nor is this gas "critically needed" (FPC 6) for the California market served by El Paso since, as Califor . admits, additional gas would go to serve "low priority customers" there. (Calif. 7).

[28] 3 H. WILLIAMS, OIL & GAS LAW § 603 (1975 ed).

[29] Under the usual oil and gas lease, the producer's leasehold estate "customarily continues indefinitely for the life of the field." 3 H. WILLIAMS, OIL & GAS LAW § 603 (1975 ed.).

producer's dedication of the gas attributable to the same leasehold rights,[30] the Tenth Circuit explicitly distinguished the decision below. The Tenth Circuit noted that in *Southland Royalty*, 543 F.2d at 1138, the Fifth Circuit had recognized that a "successor" is bound by the burdens on his rights created by the producer from whom he acquires his rights. But since Southland Royalty never acquired, succeeded to, or had any interest in Gulf's leasehold rights, and since its entirely separate mineral fee estate was never owned and could not have been encumbered by Gulf, Southland Royalty is not a "successor" to Gulf. *Id.*[31]

Finally, petitioners speculate that, though limited narrowly on its facts, the decision below will "foster" short-term leases as a means of enabling producers to evade the Commission's jurisdiction. (El Paso 8, Calif. 21, FPC 7, 14-15). Petitioners offer no support whatsoever for such speculation, for obvious reasons. Why would any producer take a short-term mineral lease, e.g., a 2-year lease, pay lease bonus money, and invest several hundred thousand dollars in drilling, if his entire investment will be forfeited at the end of the two year period? Termination of a mineral lease is simply not in the lessee's economic interest. This is precisely why producers had stopped using fixed-term leases by 1928.[32]

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[30] The facts were as follows: Pursuant to a contract, Phillips had assigned its one-half interest in the Young lease to Goldston, which then drilled and discovered gas. Phillips retained a contractual option to require Goldston to reconvey 40% of Phillips' interest in the Young lease back to Phillips when the well paid out. Phillips exercised this option and tried to sell the gas attributable to its interest in the Young lease to Goldston's interstate purchaser on identical terms and conditions – except for a higher price. The Commission held that Phillips was Goldston's successor, and bound by the terms of Goldston's dedication of the Young leasehold gas. The Tenth Circuit agreed.

[31] Petitioners' suggestion that this case should be reviewed because the pending appeal in *Harrison* v. *FPC*, 5th Cir. No. 76-4318, depends upon it is equally erroneous. The *Harrison* case involves a threshhold question of whether a producer who sought and obtained a certificate for the sale of "gas produced from reserves underlying leases in Sections 11 and 29" dedicated only his interests in those sections, or also his interests in four other sections.

[32] *See* 3 H. WILLIAMS, OIL & GAS LAW § 601.1 at pp. 2-3 (1975 ed.).

CONCLUSION

For the foregoing reasons, the petitions of California, El Paso and the Commission for writs of certiorari present no question warranting review of the decision below, and should be denied.

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In the Supreme Court

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OCTOBER TERM, 1976

No. 76-1114

THE PEOPLE OF THE STATE OF CALIFORNIA and the PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Petitioners,*

vs.

SOUTHLAND ROYALTY COMPANY, et al., TEXACO INC., EXXON CORPORATION and MOBIL OIL CORPORATION, *Respondents.*

No. 76-1133

EL PASO NATURAL GAS COMPANY, *Petitioner,*

vs.

SOUTHLAND ROYALTY COMPANY, et al., TEXACO INC., EXXON CORPORATION and MOBIL OIL CORPORATION, *Respondents.*

No. 76-1587

FEDERAL POWER COMMISSION, *Petitioner,*

vs.

SOUTHLAND ROYALTY COMPANY, et al., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF PETITIONERS THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 543 F.2d 1134. The Federal Power Commission's (Commission) Declaratory Opinion and Order on Termination of Long-Term Leases, Opinion No. 737, in the consolidated proceeding styled *El Paso Natural Gas Company,* Docket No. CP75-209, and *Texaco, Inc.,* Docket No. CI75-594, issued July 11, 1975, is not yet reported and is printed at Joint Appendix page 598. The Commission's Opinion and Order Denying Rehearing but Adopting Per Curiam, Opinion No. 737-A in Docket No. CP75-209 and CI75-594, issued September 3, 1975, is not yet reported and is printed at Joint Appendix page 708.

JURISDICTION

The judgment of the Court of Appeals was entered on December 13, 1976. A petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit was filed on February 11, 1977. On June 27, 1977, this Court granted the petition for a writ of certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1) and Sec. 19(b) of the Natural Gas Act, 15 U.S.C. Sec. 717r(b).

QUESTION PRESENTED

Whether the Natural Gas Act, Section 7(b) requires reversionary mineral interest owners of certain gas producing lands to obtain abandonment authorization from the Commission before they can terminate sales of a continuing flow of natural gas for resale in interstate commerce when the initial dedication of the gas was made by leaseholders of 50-year fixed-term leases that have expired.

STATUTORY PROVISIONS INVOLVED

Involved here are provisions of the Natural Gas Act, 15 U.S.C. Sections 717-717w. Resolution of the issues presented turns especially upon Sections 1(b) and 7(b), (c), and (e), 15 U.S.C. Section 717(b) and 717f(b), (c) and (e). These provisions are set forth in Appendix A.

STATEMENT OF CASE

This case commenced before the Commission in two consolidated proceedings involving the issue of the necessity for abandonment authorization pursuant to Section 7(b) of the Natural Gas Act as a result of the expiration of two 50-year fixed-term oil and gas leases. On July 14, 1925, Gulf Oil Corporation (Gulf), then Gulf Production Company, entered into an oil and gas lease with W. N. Waddell (Waddell Lease) under which Gulf obtained the exclusive right to explore for, produce and market all oil and gas from 45,771 acres of land in Crane County, Texas for a 50-year period. On January 26, 1951 and March 1, 1972, respectively, Gulf entered into two surplus

residue gas purchase contracts with El Paso Natural Gas Company (El Paso) whereunder Gulf sold to El Paso at the outlet of Gulf's Waddell Gasoline Plant natural gas produced from the Waddell Lease. Gulf received a certificate of public convenience and necessity from the Commission authorizing the sale of such gas for resale in interstate commerce to El Paso. El Paso, in turn, transports such gas in interstate commerce through its interstate pipeline system for distribution and resale in the states of Texas, New Mexico, Arizona, Nevada and California. Upon expiration of the Waddell Lease on July 14, 1975, the reversionary mineral interest owners[1] obtained under Texas law unconditional title to the mineral estate underlying the Waddell Lease. *Gulf Oil Corp. v. Southland Royalty Co.*, 496 S.W.2d 547 (Tex. 1973). Shortly prior to the termination of the Waddell Lease, Southland Royalty Company, under claim of its reversionary interest, contracted with an intrastate pipeline, Intratex Gas Company, effective as of the time of termination of the lease, to sell the gas which Gulf had not produced from the same formations from which gas previously had been produced, sold and delivered to El Paso for resale in interstate commerce.

On August 7, 1925, Gulf entered into a similar 50-year fixed-term oil and gas lease with Goldsmith

[1]Southland Royalty Company has ownership of approximately 47% of the acreage involved; trustees under the will of Warren Wright have 25.7%; Exxon Corporation (Exxon) has 14%; and Mobil Oil Corporation (Mobil) and more than 100 others own lesser shares.

and others (Goldsmith Lease) under which Gulf obtained exclusive mineral rights to some 19,840 acres in Ector County, Texas. Gulf sold the gas attributable to gas reserves covered by the Goldsmith Lease to Phillips Petroleum Company (Phillips) pursuant to a certificate of public convenience and necessity issued by the Commission. Phillips sold such gas to El Paso at the outlet of Phillips' Goldsmith Plant pursuant to certificates of public convenience and necessity granted by the Commission, and El Paso, in turn, transports it through its interstate gas transmission facilities for subsequent resale in interstate commerce. The Goldsmith Lease expired on August 7, 1975 and title to the mineral estate reverted to the reversionary mineral interest owners.[2]

On January 20, 1975, El Paso petitioned the Commission in Docket No. CP75-209 for a declaratory order determining whether the Waddell Lease reversionary mineral interest owners could, when the Waddell Lease expired, cease gas deliveries to El Paso and sell the gas for resale in intrastate commerce without prior abandonment authorization pursuant to Section 7(b) of the Natural Gas Act. On April 8, 1975, Texaco petitioned the Commission in Docket No. CI75-594 for a similar determination regarding gas produced from reserves covered by the Goldsmith Lease. The Commission consolidated

[2]Texaco Inc. (Texaco) owns approximately 25% of the acreage formerly covered by the Goldsmith Lease. Southland Royalty Company and several other parties own fractional parts of the remaining acreage.

Docket Nos. CP75-209 and CI75-594. No factual issues being in dispute, no evidentiary hearings were held.

The Commission issued Opinion Nos. 737 and 737-A on July 11, 1975 and September 3, 1975, respectively, wherein it determined that the reversionary mineral interest owners were subject to the dedications made by leaseholder Gulf for the sale of gas for resale in interstate commerce to El Paso and that, upon termination of the leases, they could not divert the gas into intrastate commerce without first obtaining abandonment approval under Section 7(b) of the Natural Gas Act.

Petitions for review of Opinion Nos. 737 and 737-A were filed by reversioners Southland Royalty Company, Texaco, Exxon and Mobil in the United States Court of Appeals for the Fifth Circuit.[3] The Court of Appeals, in *Southland Royalty Co. v. Federal Power Commission,* 543 F.2d 1134 (5th Cir. 1976), reversed the decisions of the Commission and held that under applicable Texas law a lessee did not have "the right to encumber or restrict the reversionary estate" and, therefore, gas attributable to the reversioners' interests was not dedicated to interstate commerce.

SUMMARY OF ARGUMENT

This Court, in a line of cases involving Section 7(b) of the Natural Gas Act, has consistently given

[3]Hereinafter these reversionary mineral interest owners, respondents in this Court, are referred to as Southland Royalty Company.

the broadest interpretation to that section holding that once gas is dedicated to interstate commerce there can be no withdrawal of that supply from continued interstate movement without Commission approval. The Commission has been required to maintain strong control over ingress to and egress from the interstate gas market using the public interest as a standard. This Court has found the Commission to be in error for failing to review the price of gas in an application to serve the interstate market where private parties had agreed on the price and refused to submit it to the Commission to consider whether the price was in the public interest. A Commission issued certificate of unlimited duration was upheld against the protest of a producer requesting a certificate limited to a contract of sale. The Court supported the Commission in ordering a pipeline to continue the service dedicated by its predecessor after the termination of a sales contract. The Commission was overruled when it gave dispositive weight to private agreements in an abandonment proceeding.

In reviewing the requirement to seek abandonment authorization, this Court has recognized that the Natural Gas Act relates to the flow of gas in interstate commerce. It has held that gas flowing in a commingled stream both intrastate and interstate requires Commission certification. Federal jurisdiction follows the actual flow of gas, not the technicalities of legal agreements. Further the Court has stated that natural gas *service* involves the movement of gas in interstate commerce, while the initial gas sales contract is but the commencement of that service.

This Court's rationale has been made abundantly clear. The heart of the Natural Gas Act is found in those provisions requiring initially that any proposed service, sale, operation, construction, extension, or acquisition will be required by the present or future public convenience and necessity, that rates and charges will be just and reasonable, and that once gas is dedicated there can be no withdrawal of that supply without Commission approval. The primary aim of the Natural Gas Act is to give consumers a complete, permanent and effective bond of protection from excessive rates and charges. The Commission and this Court must look to the Congressional purpose of the Act as well as the practical, economic and public interest issues raised by any contention that the Natural Gas Act is inapplicable. In this regard, this Court has stated that the Act cannot be hamstrung by technical concepts of local law.

A court reviewing such a contention must look to the Natural Gas Act and the public interest for guidance, not private contracts or local law. Yet the lower court in this case violated this concept. It gave dispositive weight to the lease agreement involved and the local law governing it, distinguishing the strong precedents set by this Court. This effectively placed the consideration of the public interest in private hands, exactly the situation which must be guarded against. The question below is analyzed by the court in terms of property law *versus* regulatory powers. More properly, the analysis should have recognized that the Natural Gas Act imposes a regulatory requirement on the subject natural gas over and

above local law and lease agreements. The ownership rights in the subject gas, which remains undisturbed, cannot affect the service requirement which was undertaken by Gulf and which attached to the gas.

ARGUMENT

The jurisdiction of the Commission attaches to the transportation of natural gas in interstate commerce and to the sale for resale of natural gas in interstate commerce. Under Section 7(c) of the Natural Gas Act, no natural gas company can engage in such sale or transportation without a certificate of public convenience and necessity issued by the Commission. Section 7(b) of the Natural Gas Act precludes abandonment of that sale or transportation without Commission authorization. Section 7(b) requires a finding by the Commission that available supply is depleted or that "the present or future public convenience or necessity permits such abandonment." These provisions follow the normal regulatory structure created by Congress. It has long been recognized by Congress and this Court that a strong abandonment provision is required to make the Natural Gas Act viable. In fact, the abandonment procedure in the Natural Gas Act is the only legal avenue to withdraw the flow of natural gas from interstate commerce. This Court has held that once natural gas begins to flow in interstate commerce, it thereby becomes dedicated to interstate commerce. *(California v. Lo-Vaca Gathering Co.*, 379 U.S. 366, 369 (1965).) Further, it has been held that this flow of gas cannot be abandoned without Com-

mission authorization even if the contract for sale of that gas has expired. *(United Gas Pipe Line Company v. FPC,* 385 U.S. 83 (1966).)

Litigants before this Court have attempted through the use of various legal formulations to avoid this requirement. The issue in these cases, as in the instant one before the Court, is the extent to which natural gas reserves, once dedicated to interstate commerce, can be withdrawn from interstate commerce by means of transactions among private interested parties. This, in essence, becomes private control of the duration of the dedication of gas in interstate commerce and private control of the public interest.

This type of private arrangement was sucessfully supported in the court below. Southland Royalty Company argued that, under Texas law, a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the terms of his interest. Since Gulf, the leaseholder, never was possessed of rights in the gas under the leasehold lands which could survive the termination of its private 50-year lease, it never could create rights in a third person to that same gas.

Even though this Court has stated that a regulatory statute such as the Natural Gas Act would be hamstrung if it were tied to technical concepts of local law *(United Gas Improvement Co. v. Continental Oil Co.,* 381 U.S. 392, 400 (1965)) the court below chose to follow Texas law and ruled against the statutory mandate and line of cases supporting it. The Natural Gas Act as interpreted by this Court governs

the obligation to continue deliveries of natural gas in interstate commerce absent Section 7(b) abandonment authorization, once interstate gas service has been initiated. Local law cannot be permitted to frustrate that regulatory control.

Contrary to the view of the court below, the regulatory powers of the Natural Gas Act do not challenge property rights here. Rather they impose a regulatory requirement on the subject natural gas over and above local law and property rights.

I. THE COMMISSION'S ORDER IN THIS MATTER COMPLIES WITH THE STATUTORY REQUIREMENTS AND APPLICABLE CASE LAW.

This Court has through an extensive line of cases supported a very broad interpretation of the abandonment provision of the Natural Gas Act. Beginning with the *Catco* case *(Atlantic Refining Company v. Public Service Commission of New York,* 360 U.S. 378 (1959)) this Court has unequivocally enunciated its understanding of the Natural Gas Act. The *Catco* case, while involving different facts than the instant proceeding, revolved around essentially the same principle. In *Catco* the parties had agreed upon a price for gas prior to seeking a certificate of public convenience and necessity. The Commission granted the certificate without determining the fairness of the price. This decision was overturned because of the Commission's refusal to examine this vital aspect of the application. The thread that links the *Catco* case

to the proceeding before the Court and indeed runs through the entire line of cases on this subject is the issue of private arrangements *versus* regulatory control. The parties in the *Catco* case had established a price for the gas between themselves by private contract. In fact, the Natural Gas Act itself is built in the first instance on private contracts. However, the Natural Gas Act requires the Commission to determine whether these private agreements are in the public interest.

This Court in *Catco* stated in speaking of the Natural Gas Act:

> "The heart of the Act is found in those provisions requiring initially that any 'proposed service, sale, operation, construction, extension, or acquisition . . . will be required by the present or future public convenience and necessity.' §7(e), 15 USC §717f(e), and that all rates and charges 'made, demanded, or received' shall be 'just and reasonable' §4, 15 USC §717(c). The Act prohibits such movements unless and until the Commission issues a certificate of public convenience and necessity therefor, §7(c), 15 USC §717f(c). Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval."[4]

The above language explains the basic operation of the Act. For without control over ingress and egress

[4] *Atlantic Refining Company v. Public Service Commission of New York, supra,* at 382, 388.

of the natural gas in interstate commerce there can be no effective protection of the public interest, the basic purpose of the Act.

This concept of regulatory control as it applies to abandonment of service was analyzed in depth in *Sunray Mid-Continent Oil Co. v. Federal Power Commission,* 364 U.S. 137 (1960). In this case the Court held that the Commission had authority to tender a certificate of public convenience and necessity without time limitation to an independent producer disregarding his request that the certificate be limited in time to the duration of the contract for the sale of gas which the producer had made. The practical result was that the expiration of a contract between a natural gas producer and an interstate pipeline company to sell gas in interstate commerce did not excuse the obligation to continue delivery of such gas until the requirements of Section 7(b) had been met. Similarly, the agreement contained in the leases in the instant case to limit Gulf's power to produce gas for a period of fifty years cannot be substituted for a proceeding under Section 7(b) to determine whether cessation of deliveries of gas is permitted by the public interest.

As recognized in the *Sunray* case, the Section 7(b) abandonment provision follows a common pattern in federal utility regulation.[5] This type of provision is also found in the Interstate Commerce Act and the

[5] *Sunray Mid-Continent Oil Co. v. Federal Power Commission,* 364 US 137, 141, 142.

Federal Communications Act.[6] Without this provision, private parties could withdraw service at will and avoid the regulatory scheme thereby thwarting the Commission's ability to protect the public. In the *Sunray* case the Court analyzed the motivation of the petitioners, the gas producers, in seeking to limit the Commission's authority to grant a certificate of public convenience and necessity to match the time limits set by their contract. The Court found that this would have the effect of allowing the parties before the Court to evaluate the interstate gas market on purely economic grounds when the subject contract expired thereby avoiding public interest considerations. But further, the significance of the petitioners' argument was that a ruling in favor of the petitioners would allow gas producers in the future to style sales contracts in such a fashion as to allow termination in any number of circumstances that they deemed unfavorable, untrammeled by Commission regulation.[7] This contention would effectively emasculate the Natural Gas Act. The abandonment provision would become little more than a means to enforce the terms of private contracts.

[6]Interstate Commerce Act, Section 1(18) as added by the Transportation Act of 1920, 41 Stat. 477, 49 USC Section 1(18); Federal Communications Act, Section 214(a) as amended by the Act of March 6, 1943, 57 Stat. 11, 47 USC Section 214(a).

[7]*Sunray Mid-Continent Oil Company v. Federal Power Commission, supra,* at 142. In a companion case, *Sun Oil Company v. Federal Power Commission,* 364 US 170 (1960) this Court again rejected the argument that the Commission must limit a certificate of public convenience and necessity to the period of a gas sales contract so that the contract governed the abandonment provision. The Court pointed out that the certificate that was issued authorized both the "sale" of natural gas and a "service" not limited to the underlying contract.

The duty to deliver gas after a sales contract expires is one imposed by the Act not by a contractual or private rights theory. In this regard, the Court in *Sunray* quickly set aside the petitioners' argument that a certificate of public convenience and necessity only authorized a specific sale. This Court recognized that under Section 7(e) of the Natural Gas Act, the Commission may issue a certificate authorizing the movement of gas in interstate commerce as a "service" and the sale of the gas is the commencement of that service.[8] Service as used in Section 7(b) of the Natural Gas Act means much more than the sale of gas in interstate commerce under a contract. It involves a consideration of the public interest. This includes the authority of the Commission to review rates, impose terms and conditions on the sale of the gas and order the continuation of the flow of gas in interstate commerce after contract expiration.

> "Further, the Power Commission has from an early date taken the view that there is a continuing obligation to perform 'service' imposed by the Act which outlasts the term of a seller's original contract of sale. As early as 1942 it held that an abandonment of service after the expiry of such a contract had to have Commission approval under §7(b) [Citation omitted]. . . . The ruling has been followed, see Panhandle Eastern Pipe Line Co., 11 FPC 167, 172, and we think this contemporaneous and consistent construction, pointing again to a distinction between the underlying 'service' to the public and the

[8]*Sunray Mid-Continent Oil Co. v. Federal Power Commission, supra,* at 149.

contractual means by which it is implemented, is to be afforded weight in the construction we make."[9]

In the instant case, the sole limitation imposed by the leases in question on Gulf's powers to sell gas was the 50-year duration of the leaseholds. Gulf had dedicated all of the reserves under those leaseholds to satisfy its obligation to sell gas in interstate commerce. The 50-year lease limitation does not alter the fact that all of the subject gas had been dedicated to interstate commerce. The service involved in selling that gas in interstate commerce must come within the ambit of Section 7(b).

The issue of regulation of the gas itself as well as the legal contractual arrangement in a specific instance have been further refined by this Court since the *Sunray* case.

The case of *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965) considered this issue although in a slightly different context. Factually, the *Lo-Vaca Gathering Co.* case involved an order of the Commission declaring to be within its jurisdiction, as sales of natural gas in interstate commerce for resale, sales of natural gas in Texas, produced and delivered there, but flowing in a commingled stream with gas from other sources, a portion of which would be resold out of Texas. The authority of the Commission was challenged by the producer of the gas. This Court held that the fact that a substantial part of the gas would

[9] *Sunray-Mid-Continent Oil Co. v. Federal Power Commission, supra,* at 153, 154.

be resold in interstate commerce invoked federal jurisdiction at the outset over the entire transaction. This result was reached even though the sales were to be made under "restricted use" agreements explicitly limiting the gas in its use. This Court stated:

> "We said in Connecticut Co. v. Federal Power Commission, 324 U.S. 515, 529, 89 L.ed 1150, 1160, 65 S.Ct. 749, 'Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental, test.' And that is the test we have followed under both the Federal Power Act and the Natural Gas Act except as Congress itself has substituted a so-called legal standard for the technical one. (Citations omitted)."[10]

At first blush it could be argued here that this case is too remote factually from the case now before the Court to be helpful. However, the logical and necessary rationale of viewing the actual gas use and its effect under the Natural Gas Act as opposed to restricting the Commission to the legal agreement between the private parties was very much in evidence in the case. As Mr. Justice Douglas stated: "Were suppliers of gas and pipeline companies free to allocate by contract gas from a particular source to a particular use, havoc would be raised within the federal regulatory scheme . . ."[11]

The Circuit Court of Appeals for the Fifth Circuit itself ruled in *Mitchell Energy Corporation v. Federal Power Commission,* 533 F.2d 258 (1976) that the suc-

[10] *California v. Lo-Vaca Gathering Co., supra,* at 369.
[11] *Ibid.* at 369.

cessor in interest to a holder of a certificate dedicating all available natural gas in a certain field to interstate commerce was required to continue to deliver into interstate commerce all gas produced from that field. The successor producer argued that only the gas being produced from existing wells must be continued to be sold in interstate commerce. The original sales contract in this case had expired. However, since all the gas in the field had been dedicated to interstate commerce under the predecessor's certificate of public convenience and necessity, the court held that the entire field was dedicated and came under the Natural Gas Act.

The *Mitchell Energy Corporation* case relied on *United Gas Pipe Line Company v. Federal Power Commission* 385 U.S. 83 (1966) as authority as well as the *Sunray* case. This Court in *United Gas Pipe Line Company* upheld the decision of the Court of Appeals for the Fifth Circuit that the Commission had authority to order an interstate pipeline company after termination of a contract to purchase gas from a certain field to continue purchasing that gas at the producer's new rate approved by the Commission. The Court in analyzing the facts of that case again distinguished between "service" and "sales" of gas in interstate commerce.

The above cited cases present a comprehensive guideline to follow in judging a claim that a particular transaction concerning natural gas sold or transported in interstate commerce is not governed by Section 7(b). Case after case have given this pro-

vision of the Natural Gas Act the broadest interpretation and support.

Southland Royalty Company has approached this weight of precedent by arguing that none of the cases on this subject matter are relevant to its fact situation. (See: *Brief of Respondents Southland Royalty Company, et al. in Opposition* dated June 3, 1977, page 7 and footnote 18, responding to petitions for a writ of certiorari. The basis for this statement is that Southland Royalty Company never dedicated gas to interstate commerce, nor did Gulf dedicate the Southland Royalty gas to interstate commerce. Southland Royalty Company has consistently argued that their gas is somehow separate and distinct from the gas that has been continuously flowing in interstate commerce for 50 years under the Gulf leases. To follow this argument to its logical conclusion this Court must then accept the premise that under Texas law the leaseholders cannot dedicate rights to property beyond the term of their lease and therefore the Natural Gas Act is not applicable to the subject gas.

This theory contradicts the entire line of case law in the subject area. It has not been suggested that Southland Royalty Company somehow sought a dedication of gas in interstate commerce or that Gulf in Southland Royalty Company's name sought to dedicate Southland Royalty Company's gas in interstate commerce.[12] Rather, the abandonment provision of Section

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[12]In their briefs in the Court below, Southland Royalty Company, et al. (Southland Brief p. 11), Texaco Inc., and Mobil Oil Corporation (Texaco Brief p. 7) argued that the case of *Mobil*

7(b) attaches to the subject gas by reason of the Natural Gas Act itself. There is no dispute in this case that Gulf had all possessory interests in the gas under the leaseholds including full right of sale. In fact, Gulf not only had the authority under its leases to develop and market the gas interstate but also had the reciprocal duty under the leases to do so, as a gas lease requires the development and marketing of the gas. As a result of its sale of the gas produced for resale in interstate commerce, Gulf dedicated all the natural gas from the acreage covered by the leases to interstate commerce. The certificates of public convenience and necessity issued by the Commission contained no time limitation nor limitation as to the amount of gas under the acreage that could be sold in interstate commerce. In short, the instant fact situation is explicitly covered by *Sunray Mid-Continent Oil Company* and the line of cases that follow it.

Oil Corporation v. Federal Power Commission, 463 F.2d 256 (D.C. Cir. 1971), cert. denied, 406 US 976 (1972) governed the instant fact situation. In the *Mobil* case it was found that the ownership of a royalty interest in gas flowing in interstate commerce did not make the royalty owner subject to the Natural Gas Act. This argument was presented presumably because petitioners in the court below failed to appreciate that the Natural Gas Act applied to the "service" involved in the sale of this flow of natural gas in interstate commerce. They were attempting to bolster their argument that they had not themselves sought to make a dedication of natural gas to interstate commerce. In fact, the *Mobil* case is irrelevant to the instant matter because there is no issue *of a royalty* ownership here. While it is true that *Southland Royalty Company* were royalty owners during Gulf's leasehold, this fact does not constitute an issue in this case. Further, the *Mobil* case does not apply to royalty owners who have since taken actual control of the natural gas and are attempting to remove it from interstate commerce.

Southland Royalty Company contends that the instant situation is different in that, in all other cases construing Section 7(b), the parties seeking to avoid the necessity for an abandonment authorization were either successors in interest to the previous natural gas owners or had themselves dedicated the gas in interstate commerce through since expired contracts. Southland Royalty Company submits that they never were possessed of the gas in question during Gulf's leasehold nor succeeded to Gulf's interests. The fallacy of this argument is that it seeks to make a technically legal distinction while ignoring the purpose of the Natural Gas Act and the abandonment provision therein. While it might be correct that the legal arrangement between the private parties in this case is somewhat different than such arrangements in cases previously before this Court, that fact in itself does not warrant a ruling in favor of Southland Royalty Company. Southland Royalty Company has not explained why, when judged against the language of the Act and the purposes to be served by the Act, their transaction should be freed from the duty imposed by that Act.

A review of the cases interpreting the Natural Gas Act reveals a history of decisions that looked beyond a cursory reading of the language of the Act to seek out the public interest. *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944) upheld the validity under the Natural Gas Act of a rate order by the Commission reducing rates stating the Commission's ratemaking function involves the

making of pragmatic adjustments. The Court noted that the primary aim of the Natural Gas Act was to protect consumers against exploitation at the hands of natural gas companies. 320 U.S. 591, 610. The respondent in the *Hope Natural Gas Company* case argued among other things that the Natural Gas Act did not grant such broad powers to the Commission.

Phillips Petroleum Company v. Wisconsin, 347 U.S. 672 (1954) ruled that Commission regulation applied to an independent producer of natural gas as being engaged in the sale in interstate commerce of natural gas for resale even though the producer did not engage in the interstate transmission of gas. This Court discussed the legislative history and the Congressional intent to protect the consumer to determine that Section 1(b) of the Natural Gas Act applied to the independent producer.

In *Federal Power Commission v. Transcontinental Gas Pipe Line Corp.,* 365 U.S. 1 (1961) the Commission authority to deny a certificate of public convenience and necessity for a "direct sale" to a public utility was upheld when the reason for the denial was that the gas was to be used to burn under boilers, a use the Commission believed to be inferior. As a direct sale, the transaction involved in that case did not come under the Commission's jurisdiction except for the granting of a certificate authorizing transportation under Section 7. This Court considered the question of whether such a broad policy issue as the end use of the gas was within the language of the

Natural Gas Act. In again analyzing Congressional intent this Court stated: "The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted. For the performance of that function the Commission has been entrusted with a wide range of discretionary authority." 365 U.S. 1, 7. Quoting from its ruling in *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana, et al.,* 332 U.S. 507 (1947) the Court reaffirmed its belief that the Congress meant to "create a comprehensive and effective regulatory scheme to protect consumers." 365 U.S. 1, 19.

Federal Power Commission v. Louisiana Power and Light Company, 406 U.S. 621 (1972), upheld the Commission's power to authorize a jurisdictional pipeline's curtailment plan applicable to both its direct sales customers and its resale customers. The direct sales customers objected on the basis that Section 1(b) only applies to sales of gas in interstate commerce for resale and direct sales are specifically exempted. This Court found that Section 1(b) involved three entirely separate regulatory areas: (1) transportation of natural gas in interstate commerce; (2) sales for resale in interstate commerce; (3) natural gas companies engaged in such transportation or sale. 406 U.S. 621, 636. Contrary to what might appear from an initial reading of the subject section, the Court found a Congressional intent to treat each of these as an independent grant of jurisdiction. Therefore, in the *Louisiana Power and Light* case, the

jurisdiction over transportation was not limited by the limits on the jurisdiction over sales. A curtailment plan was found to be within the Commission's jurisdiction over transportation.

California acknowledges that the mere need for federal regulation does not establish Commission jurisdiction if Congress has not granted it. However, we contend that the mere assertion that a particular legal arrangement is not specified on the face of the Natural Gas Act is insufficient as an argument that Southland Royalty Company is free of that Act. Section 7(b) of the Natural Gas Act requires abandonment authorization before gas may be withdrawn from interstate commerce. The ruling of the Court below allowing the exemption of Southland Royalty Company creates just the "attractive gap" in regulation that Congress sought to avoid in seeking to protect the consumer.

It is submitted that the language of the Natural Gas Act taken together with the purposes to be served by that Act lead to the conclusion that Congress intended the instant transaction to be governed by Section 7(b) of the Natural Gas Act.

II. THE PURPOSES TO BE SERVED BY THE NATURAL GAS ACT REQUIRE A REVERSAL OF THE LOWER COURT'S DECISION.

The cases cited in the above section of this brief were not decided solely on legal precedent or a technical reading of a statute. This Court has been very

thorough in seeking the meaning of the Natural Gas Act not only through Congressional intent but also by using a common sense approach of viewing the actual economic and public policy consequences of the particular transactions before the Court. For the Natural Gas Act must be interpreted within the context of the real world events which Congress believed generated a need for regulation. The basic overriding concern throughout the Natural Gas Act and significantly so in Section 7(b) has been the effect a particular action will have on the public interest. In more specific terms, this Court has looked at economic effects, effects on service, the need for comprehensive regulation and the effects avoidance of regulation will have on the regulatory scheme and the public.

Federal Power Commission v. Hope Natural Gas Company, supra, in deciding the scope of the Commission's discretion in carrying out its responsibilities under the Natural Gas Act started with the premise that the primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies. 320 U.S. 609, 610. Congress in enacting the Natural Gas Act gave the Commission broad powers of regulation in setting just and reasonable rates and in controlling entrance to and exit from the interstate market under Section 7. 320 U.S. 609, 611. In the *Hope Natural Gas Company* case the Court logically considered the economic restrictions that respondent's arguments would have on the Commission's ability to protect the public from economic exploitation and found that such arguments,

if successful, would contravene the purpose of the Act. This type of analysis was carried forward to the *Catco* case, 360 U.S. 378, 388, in which this Court stated that the purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas. In fact, the Court in *Catco* began its analysis of petitioners' arguments by first putting in focus the purposes to be served by the Act, then listing the provisions of the Act that carry out those functions and, finally looking at the practical effect that the petitioners' arguments, if successful, would have on the policies to be protected. In this case the Court concluded: "When the proposed price is not in keeping with the public interest . . . the Commission in the exercise of its discretion might attach such conditions as it believes necessary." 360 U.S. 378, 391.

The *Sunray Mid-Continent Oil Company* proceeding brought the application of this approach directly to the consideration of Section 7(b). This Court, looking at the practical consequences of limiting the abandonment provision of the Act, started with the domino effect caused by a producer that could obtain a certificate of public convenience and necessity for a limited period and thereby avoid the need for abandonment authorization. Carrying this chain of events through to the pipeline company serving a community, the Court recognized the economic stranglehold such a situation would create. "And this, though the primary practical problem that led to the passage of the Act was the great economic power of the pipeline com-

panies as compared with that of communities seeking natural gas service. (Citation omitted)." 364 U.S. 137, 143. This Court quickly recognized the danger of narrowly defining the abandonment provision of Section 7(b). "When attached to the leverage of a power to abandon service, at a contract's termination, without contemporaneous Commission approval, this power to exercise contractual control not only over rates but over the mode of this regulation, would be a substantial one indeed."[13] Against this practical backdrop the Court not only stated the principle that the abandonment provision of Section 7(b) must be broadly construed to effectuate the Natural Gas Act but the Court also set forth the more subtle analysis that Section 7(b) contemplates the "service" represented by the movement of gas in interstate commerce not merely the "sale" of gas for resale. In this case where a producer attempted to force the Commission to issue it a limited certificate of public convenience and necessity thereby avoiding the abandonment provision, the Court after reviewing the consequences of this argument on Section 7(b) stated: "The practical reasons behind petitioner's self-abnegating desire to have a limited rather than an unlimited authorization from the Commission are obvious from a study of the Natural Gas Act's provisions. Obvious also is the damaging effect that acceptance of petitioner's central contention would have upon the policies of the Act."[14]

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[13] *Sunray Mid-Continent Oil Company v. Federal Power Commission, supra,* at 147.

[14] *Sunray Mid-Continent Oil Company v. Federal Power Commission, supra,* at 141.

This Court has continued to maintain a strong support of Section 7(b) based on these public interest considerations and a recognition of the damage that could be done to regulation under the Act if abandonment authorization could be avoided.[15] Even in *Federal Power Commission v. Moss,* 424 U.S. 494 (1976) where the Commission's authority was upheld in issuing pregranted abandonment authorization commensurate with a sales contract in special instances to stimulate domestic exploration and development of natural gas reserves, Chief Justice Burger in a concurring opinion voiced his disapproval of this approach on the above-stated public policy grounds.

> "This factor of unregulated choice by the producer raises the very evils which the Court pointed out in Sunray II, supra: '[E]very independent producer of natural gas . . . [would] be free at a future date, untrammeled by Commission regulation, to reassess whether it desired to continue serving the interstate market.' 364 U.S. at 142, 4 L.Ed. 2d 1623, 80 S.Ct. 1392."[16]

A determination based on the public interest has also been the cornerstone of the resolution of issues in those cases before this Court where the issues were not foreseen when the Natural Gas Act was created. In *United Gas Improvement Company v. Continental Oil Company, et al.,* 381 U.S. 392 (1965), the Commission asserted jurisdiction over, and refused to

[15]See *United Gas Pipe Line Co. v. Federal Power Commission, supra,* at 88, *Sun Oil Company v. Federal Power Commission,* 364 U.S. 170, 175 (1960).

[16]*Federal Power Commission v. Moss, supra,* at 506.

approve the sale of leasehold interests where a natural gas company which owned and operated an interstate pipeline transmission system purchased the leases in a field of proven and substantially developed reserves of gas. The Court upheld the Commission's determination that this was in reality a sale of natural gas for resale in interstate commerce. In making its determination this Court considered the effect on the Natural Gas Act of denying the Commission jurisdiction.

> "Acceptance of any such narrow interpretation would make Phillips [*Phillips Petroleum Co. v. Wisconsin*] a shadow. Its substance lies, instead, in the judgment that '[p]rotection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act [citation omitted] . . .'"[17]

In both *Federal Power Commission v. Louisiana Power and Light Company, et al., supra,* and *Federal Power Commission v. Transcontinental Pipe Line Corp., supra,* where the Commission's power to curtail gas deliveries to end uses on broad policy grounds was upheld, this Court based its analysis on the protection of the consumers, citing *Hope Natural Gas Company* and *Sunray Mid-Continent Oil Company.* The Court recognized that Congress meant to create a comprehensive and effective regulatory scheme to protect the consumer interest. 406 U.S. 621, 631. The Commission is required by this Court to look at the

[17]*United Gas Improvement Co. v. Continental Oil Co., supra,* at 402.

backdrop of the practical consequences resulting from its action and the purposes of the Act." That is what it has done in the instant case. Against the singular claim that the particular private legal arrangement entered into by Southland Royalty Company is exempt from Section 7(b) of the Natural Gas Act, the Commission has weighed both the requirement of this Court that it enforce that provision as well as the practical consequences of allowing such an exemption.

For the Commission must consider that such fixed-term leases as are under consideration here could become prevalent as a means to thwart Commission jurisdiction. As is being attempted in this case, future lessors could freely move from the interstate to the intrastate market with the Commission helpless to consider the public interest. Several variations of lease arrangements could be and in fact have been created that reach this result. For example, a producer recently argued before the Commission that a Section 7(b) proceeding was not required where the Commission had issued a certificate for the sale of gas in interstate commerce from certain acreage. The producer had begun production and sales of gas from only a portion of that acreage covered by the certificate, allowing the leases covering the remaining parcels of land in the acreage to lapse. As to the leases which lapsed, it was argued that no abandonment authorization was required even though the certificate embraced the gas associated with these

[18] *Federal Power Commission v. Hunt*, 376 U.S. 515, 525 (1964).

leases. The Commission rejected this argument.[19] In the instant case, the practical consequence of accepting Southland Royalty Company's argument is to place the consideration of the public interest as to abandonment in private hands. The economic effect on the consumers so oft referenced in cases on abandonment authority is especially critical here. Recent energy shortages plus the unregulated nature of the intrastate gas market have created a tremendous disparity between intrastate and interstate gas prices. It is reasonable to assume that natural gas producers will look to all possible means of selling their gas in the intrastate market to the economic and "service" detriment of the consumer. These are the very attacks on the public interest that *Sunray Mid-Continent Oil Company* required the Commission to guard against.

CONCLUSION

The Natural Gas Act, Section 7(b), unequivocally precludes abandonment of a constant flow of natural gas in interstate commerce without Commission authorization. This requirement cannot be circumvented by private agreement. Without this requirement in the Act, there would be no way to protect the consumers against economic exploitation by the

[19] *Northern Natural Gas Co. v. John L. Crawford*, Docket No. CS 71-6 (issued September 29, 1976), appeal docketed *sub nom. Harrison v. Federal Power Commission*, (5th Cir.) No. 76-4318, December 19, 1976.

natural gas producers. Therefore, California prays that the judgment of the United States Court of Appeals for the Fifth Circuit be reversed, and that the orders of the Federal Power Commission involved herein be affirmed.

Respectfully submitted,

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Dated: August 30, 1977.

(Appendix "A" Follows)

APPENDIX A

Appendix A

The Natural Gas Act, 52 Stat. 821-833, as amended, 15 U.S.C. 717-717w, provides in pertinent part:

Section 1(b):

> The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [15 U.S.C. 717(b)]

Section 7(b):

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [15 U.S.C. 717f(b)]

Section 7(c):

> No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall en-

gage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [15 U.S.C. 717f(c)]

Section 7(e):

Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [15 U.S.C. 717f(e)]

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IN THE

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OCTOBER TERM, 1977

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Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF SOUTHLAND ROYALTY COMPANY, ET AL.

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Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF SOUTHLAND ROYALTY COMPANY, ET AL.

QUESTION PRESENTED

Whether the lessee under a fifty year fixed-term oil and gas lease may dedicate to interstate service under the Natural Gas Act gas in which it never had any ownership or other interest.

STATEMENT

This case involves the extent of the interstate service dedication created under the Natural Gas Act when a lessee made an interstate sale of the natural gas attributable to its fixed-term leasehold interest. The Federal Power Commission held that, when the lessee made inter-

state sales of the gas attributable to its fifty year fixed-term oil and gas lease, it thereby dedicated to interstate service not only all of its leasehold gas but also gas in which it never had any ownership or other interest — the gas belonging to the mineral fee owners, to be produced and marketed by them after expiration of the lease. On review, the court of appeals reversed, holding that the lessee "could not legally deal in or dedicate" the mineral fee owners' gas.

1. The Leases, Interstate Sales And Certificates.

In 1925, Gulf Oil Corporation (Gulf) obtained a fifty year fixed-term oil and gas lease[1] from the owners of the Waddell Ranch in West Texas. (A. 135-40). The lessors granted Gulf the right to the oil and gas Gulf found, developed and sold from the Waddell Ranch during a specified term of fifty years.[2] In 1926, the owners of the Waddell Ranch conveyed one-half of their mineral fee interest to Southland Royalty Company.[3] At about the same time,

---

[1] Such fixed-term oil and gas leases are extremely rare. As early as 1928, it was recognized that fixed-term leases had "long been in disuse" and were "of no practical importance" in Texas. Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas*, 7 TEXAS L. REV. 1, 15 (1928). *See also* 3 H. WILLIAMS, OIL & GAS LAW § 601 (1975); 1 E. BROWN, LAW OF OIL & GAS LEASES § 5.01 (2d ed. 1973). Virtually all modern oil and gas leases provide for the leasehold estate to remain in effect as long as either oil or gas is produced in paying quantities. 2 E. KUNTZ, LAW OF OIL & GAS § 26.1 at 244 (1964); 1A W. SUMMERS, LAW OF OIL & GAS § 153 at 381 (1959).

[2] Thus, Gulf's lease did not give it the right to produce and market "all" Waddell Ranch gas, but only to produce and market the gas it found, developed and sold during the specified fifty year term. *See Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547 (Tex. 1973).

[3] *See* Vol. 13, pp. 585-87, Deed Records of Crane County, Texas. Thus, Southland Royalty Company acquired its 50% interest in the mineral fee estate 49 years before the expiration of Gulf's lease and long before interstate sales of gas had taken place. *See* note 6, *infra*. At about the same time, the Waddells conveyed the remaining 50% of the mineral fee to other respondents, such as Warren Wright, under whose will trustees own 25% of the mineral fee.

Gulf obtained an identical fifty year fixed-term lease on the Goldsmith Ranch, whose owners soon thereafter conveyed their mineral fee interest to Southland Royalty and other respondents.[4]

In 1951, Gulf commenced interstate sales to El Paso Natural Gas Company (El Paso) of casinghead gas[5] that Gulf was entitled to produce and market from a number of sources, including its fixed-term Waddell Ranch lease. (*See* A. 43).[6] Southland Royalty was not a party to Gulf's contract with El Paso, and could not have prevented its execution or performance. Southland Royalty's only economic interest in Gulf's sale of Gulf's leasehold gas was a fixed royalty of ⅛ of 4¢ per Mcf; Southland Royalty had no right to take a share of the leasehold gas in kind as royalty. (A. 135-40).

In 1954, following this Court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), Gulf applied for

---

[4] Gulf did not own all of the leasehold interests. For convenience all lessees are referred to as "Gulf," the principal lessee; all mineral fee owners are referred to as "Southland Royalty," the principal mineral fee owner; and both of Gulf's sales are discussed in terms of the Waddell Ranch. This brief is submitted on behalf of the following mineral fee owners: Southland Royalty Company, the trustees under the will of Warren Wright, the Penn interests, Exxon Corp. and Texaco Inc.

[5] *I.e.*, gas in association with crude oil. Gulf's gas well gas from the Waddell Ranch was always sold in intrastate commerce, and therefore Southland Royalty's gas well gas is not at issue in this case. References in this brief to Waddell Ranch "gas" therefore mean casinghead gas.

[6] From 1927, when Gulf first discovered oil and gas, to 1951 all of Gulf's leasehold gas was sold or used entirely within the State of Texas. In fact, no gas produced in Texas from any source was sold in interstate commerce until 1948. *See* ANNUAL REPORTS OF THE RAILROAD COMMISSION OF TEXAS, GAS UTILITIES DIVISION. In 1950, the last full year before Gulf commenced its interstate sale to El Paso, less than one-third of all gas produced in Texas was sold interstate. *See* ANNUAL REPORT OF THE OIL AND GAS DIVISION, 1950, THE RAILROAD COMMISSION OF TEXAS at 11, 34-35. Thus, whatever the situation may have been in 1959, *cf. CATCO, Atlantic Refining Co.* v. *Public Service Comm'n*, 360 U.S. 378, 394 (1959), the interstate market was not the dominant market in 1951 when Gulf made its sale to El Paso.

and was granted a certificate of public convenience and necessity under Section 7(e) of the Natural Gas Act, authorizing the existing sale of its gas to El Paso. It is uncontested that in its certificate application, as in its contract, Gulf attempted no dedication of Waddell Ranch gas beyond the fixed-term leasehold interest it owned. (A.457).[7]

In 1975, Gulf's fifty year fixed-term lease expired according to its terms.[8] As owner of the mineral fee interest Southland Royalty thereupon came into present enjoyment of its estate. Gulf continued and still continues to sell substantial volumes of gas to El Paso under its contracts and related certificates because, although Gulf has no more Waddell Ranch leasehold gas, Gulf continues to have casinghead gas available from other sources. Southland Royalty contracted to sell its gas to Intratex Gas Company.[9]

2. **The Commission's Orders.**

Three days before Gulf's lease expired, the Commission held that, by making an interstate sale to El Paso, Gulf had dedicated to El Paso not only the gas that Gulf was entitled to produce and market under its fifty year fixed-term lease but also Southland Royalty's gas. On this basis the Commission prohibited Southland Royalty from selling its "gas

[7] In 1972, Gulf entered into a second contract to sell additional volumes of casinghead gas to El Paso, from a number of sources, including its Waddell Ranch lease. The Commission duly certificated Gulf's application to make this sale. It is also uncontested that in its 1972 contract and certificate application Gulf attempted no dedication of gas beyond the interests it owned. (A. 457).

[8] Before Gulf's lease expired, Gulf sued in an attempt to establish its right to continue to produce and market oil and gas from the Waddell Ranch. The Supreme Court of Texas rejected Gulf's attempt, holding unanimously that the lease provides "a plain and certain answer to the question of when the lease terminates." *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547, 552 (Tex. 1973).

[9] Intratex is an intrastate pipeline which primarily serves the distributor of gas to residential and commercial customers in the City of Houston, Texas, and also serves high priority industrial companies in the Houston area, *i.e.*, industrial users without alternate fuel capability.

in intrastate commerce without prior permission and approval of the Commission under Section 7(b) of the Natural Gas Act." (A. 611). The Commission also directed Gulf to seek "Commission permission and approval" to reduce its sales to El Paso. *Id.* The Commission's Staff characterized the legal issue as one of "first impression" (A. 367) and the Commission itself conceded that there was "no case directly in point." (A. 605).

On rehearing, the Commission reaffirmed its holding that Southland Royalty et al. "were subject to the dedication made by the leaseholders." (A. 709). The Commission admitted that it was "holding that the leaseholders, Gulf, et al., had power to encumber the property" of the mineral fee owners with the result that they "are forced to enter into an interstate sale against their will." (A. 712).

Gulf duly filed for partial abandonment.[10] Southland Royalty appealed to the Fifth Circuit.

3. **The Decision of the Court of Appeals.**

The court of appeals reversed, holding that "Gulf could not legally deal in or dedicate" Southland Royalty's gas to interstate service. *Southland Royalty Co.* v. *FPC*, 543 F.2d 1134, 1137 (5th Cir. 1976). The court therefore rejected the Commission's claim that Gulf had dedicated Southland Royalty's gas.[11]

The court of appeals reviewed every argument made by the Commission either in the orders under review or in its brief to that court. In particular, the court held that

[10] Of course, Gulf did not request authorization for total abandonment of its sale to El Paso, since the depletion of its gas supply through expiration of its Waddell Ranch lease merely reduced (by less than one-half) the supply of casinghead gas Gulf had available from all sources covered by its contract with El Paso. Although Gulf's application was filed more than two years ago, the Commission has taken no action on it.

[11] Contrary to the Commission's characterization in its brief at page 10, the court of appeals did not hold that "by virtue of state property law the reversionary mineral interest owners were free to withdraw their gas from interstate commerce without Commission authorization." The court held that Southland Royalty's gas had never been dedicated to interstate service.

Southland Royalty was not a "successor" to Gulf's obligations, because Southland Royalty did not acquire or succeed to Gulf's leasehold rights; rather it owned an independent vested property interest that Gulf never owned or controlled. 543 F.2d at 1138. Similarly, the court of appeals noted that the Commission's reliance on *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137 (1960) was misplaced. It pointed out that this Court did not hold in *Sunray* that a producer could dedicate gas which it did not own; this Court merely stated that, since Sunray had commenced interstate deliveries of its gas under an unlimited certificate, Sunray had to deliver all the gas which it had the power to dedicate under its leasehold. 543 F.2d at 1138.

El Paso, California and the Commission sought certiorari and have filed briefs urging reversal.[12]

SUMMARY OF ARGUMENT

The decision of the court of appeals is entirely consistent with "the fundamental premise of the Act" (FPC at 11) that *once* a producer's gas has been *dedicated* to an interstate sale, it may not be withdrawn from that sale without Commission abandonment authorization under Section 7(b) of the Act. The court held that Southland Royalty's gas had never been dedicated to interstate service; therefore, no *dedicated* gas will be released or withdrawn from interstate service as a result of the court's decision.

In so holding, the court of appeals properly rejected the Commission's determination that Gulf had a legal "power to encumber" and did encumber Southland Royalty's mineral fee gas with a dedication to Gulf's interstate sale of its fixed-term leasehold gas to El Paso. The Natural Gas Act did not confer on Gulf the power to dedicate to interstate

[12] Hereinafter cited respectively as (El Paso at ...), (Calif. at ...) and (FPC at ...). The Associated Gas Distributors (AGD) and the Public Service Commission of New York (New York) have filed amicus curiae briefs in support of petitioners, which are hereinafter cited as (AGD at ...) and (NY at ...).

service gas in which it never had any ownership or other interest.

Nothing in the language or legislative history of the Act even suggests the grant of such unprecedented power to a private party. On the contrary, the Act expressly provides that a producer who applies for a certificate to make an interstate sale must be both "able" and "willing" to perform the service he proposes. Gulf was never "able" to perform any interstate service with Waddell Ranch gas to be produced after the expiration of its lease, because it never owned any interest in or had any right to control the disposition of gas produced after the expiration of its fixed-term lease. Gulf undeniably applied for and received a certificate which was limited to the sale of Gulf's leasehold gas. Thus, Gulf never was "willing" and never was found to be "willing" to dedicate Southland Royalty's gas.

The court of appeals correctly held that Southland Royalty had not consented to or ratified an interstate dedication of its gas. As the court noted, "[r]atification implies knowing choice," 543 F.2d at 1139. Yet Southland Royalty "could not have known it would be claimed" that Gulf's dedication of Gulf's gas dedicated Southland Royalty's gas. *Id.* Nor was Southland Royalty's acceptance of fixed royalties on Gulf's sale of Gulf's gas in any way inconsistent with Southland Royalty's position as a mineral fee owner and clearly did not subject Southland Royalty to Commission jurisdiction. *Mobil Oil Corp.* v. *FPC*, 463 F.2d 256 (D.C. Cir. 1971), *cert. denied* 406 U.S. 976 (1972).

This Court's decisions construing the Natural Gas Act do not suggest, much less hold, that the Act confers on a producer like Gulf the power to dedicate gas which he does not own. *CATCO, Atlantic Refining Co.* v. *Public Serv. Comm'n.*, 360 U.S. 378 (1959) and *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137 (1960), establish that once a producer accepts an unlimited certificate and commences deliveries, he must continue to deliver all the gas that he owns and dedicated to his sale when he commenced deliv-

eries of his gas. They also establish that if the producer proposes to make an interstate sale but has not commenced deliveries, it has "an undoubted right to stand firm on its own application and reject the proffered certificate." *Sunray*, 364 U.S. at 141. But none of these decisions even intimates that a producer could dedicate to interstate service gas in which it never had any ownership or other interest.

Moreover, it is clear that Gulf did not derive from property law the power to dedicate Southland Royalty's gas because it is well established that no man can dedicate what he does not own. Therefore, under property law principles, Gulf could not legally deal in or dedicate the mineral fee gas to be found and produced by Southland Royalty after termination of Gulf's fixed-term lease.

The court of appeals also properly rejected the Commission's theory that Southland Royalty "succeeded" to Gulf's dedication. 543 F.2d at 1138. As recognized both by the court of appeals and by the Tenth Circuit in *Phillips Petroleum Corp.* v. *FPC*, 556 F.2d 446 (10th Cir. 1977), a successor-in-interest is one who acquires his predecessor's estate. A successor takes "subject to any benefits and infirmities inherent therein," including an interstate sale dedication. Similarly, a covenant running with the land can only be enforced against a successor-in-interest to the covenantor. Since Gulf never owned any interest in Southland Royalty's mineral fee estate and Southland Royalty did not acquire Gulf's leasehold estate, Southland Royalty's mineral fee is not subject to any benefits and infirmities inherent in Gulf's lease.

Cases construing the Interstate Commerce Act are of doubtful relevance to the issue presented, but insofar as they may be relevant they tend to support the decision of the court of appeals that Gulf's interstate dedication imposes no service obligation on Southland Royalty. If one "carrier by railroad" is performing interstate railway service and leases his operation to another "carrier by railroad" subject to Interstate Commerce Commission jurisdiction, he can be required to resume his own service obligation upon termination of the lease. But if, as in this case, the lessor was not performing an interstate service when he executed the lease, an interstate service undertaken by a lessee imposes no service obligation on the lessor upon the termination of the lease.

The decision of the court of appeals does not impair the Commission's regulatory authority over natural gas *dedicated* to interstate service. In holding that Southland Royalty's gas had never been so dedicated the court did not free any gas which had been dedicated to interstate service. Nor does its decision determine the outcome of any case involving premature termination of an ordinary oil and gas lease capable of lasting indefinitely. In such a case the lessee commits to interstate service all of its leasehold gas but before it has delivered all of its leasehold gas the lease is prematurely terminated by the voluntary action of either the lessor or the lessee. In this case Gulf sold all its leasehold gas to El Paso, and its leasehold estate expired at the conclusion of the term provided in its lease.

Likewise, the court of appeals' decision will not impair the Commission's authority over interstate sales by encouraging future lessors and lessees to enter into previously unknown types of leases, such as short-term leases or leases terminable at will. Lessees have an extremely powerful economic incentive to secure the longest term lease obtainable, which is why oil and gas leases entered into since 1928 last as long as the lessee maintains production in paying quantities. But if some future lessee were to approach the Commission with an application to sell gas attributable to a leasehold interest terminable at will, the Commission can and will protect the interstate market against such an unreliable source of supply by refusing to issue a certificate for the sale, or by conditioning the certificate upon the lessee first obtaining a longer and more stable leasehold interest from the lessor. *Cf. Transco Exploration Co.*, FPC Docket No. CI77-306, issued June 27, 1977.

The Commission's concern to maintain its statutorily authorized control over gas dedicated to interstate service is understandable. However, in holding that Southland Royalty's mineral fee gas was never legally dedicated to interstate service, the court of appeals did not diminish the Commission's control over gas that is so dedicated. The decision below should be affirmed.

ARGUMENT

I. INTRODUCTION

A. The Concept Of Dedication Under The Natural Gas Act.[13]

Under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, the Commission is empowered to control the terms upon which a producer may initially dedicate its gas by sale to the interstate market and the basis upon which a producer may withdraw from its interstate sale the gas it dedicated to that sale. Section 7(c) provides that before a producer may make an interstate sale of gas attributable to its leasehold interest it must first obtain a certificate of public convenience and necessity from the Commission authorizing the sale.[14] Under Section 7(e), the Commission is to issue a certificate "if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed" but may attach to the certificate "such reasonable terms and conditions as the public convenience and necessity may require."[15]

The Commission cannot force a producer to dedicate its gas to interstate service.[16] Even if a producer applies for

[13] The Commission et al. do not discuss the concept of dedication to interstate commerce under the Natural Gas Act. This omission is particularly noticeable because the controlling issue in this case is whether Southland Royalty's mineral fee gas was dedicated to interstate commerce by Gulf's interstate sale of Gulf's leasehold gas.

[14] Section 7(c), 15 U.S.C. § 717f(c).

[15] Section 7(e), 15 U.S.C. § 717f(e).

[16] The Commission itself recently reiterated this fundamental limitation on its authority. *See, e.g., Cities Service Oil Co.*, Opinion No. 820, FPC Docket Nos. CI75-191 and CI75-489, issued September 20, 1977, at 6.

a certificate to make an interstate sale of its gas, it has no obligation to accept a certificate with conditions attached by the Commission, but has "an undoubted right to stand firm on its own application and reject the proffered certificate." *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 141 (1960). But if the producer initiates such a certificated sale of the gas attributable to its leasehold interest, the producer thereby dedicates its leasehold gas to interstate service, and under Section 7(b) it must continue deliveries until its available supply of natural gas is depleted to the extent that the continuance of its sale is unwarranted.[17]

When a producer makes an interstate sale of its gas it undertakes to sell, and thereby dedicates to interstate service, *its* leasehold interest in whatever gas is produced from a particular field or area during the term of its lease.[18] In many cases two or more producers own fractional shares of the leasehold interest in gas produced from a particular field or area. It is not unusual for certain producers to make interstate sales of the gas attributable to their respective shares of the leasehold interest in a given field while the remaining producers make intrastate sales of the gas attributable to their shares of the leasehold interest in the same field. The Commission has never questioned such "split-stream" sales; it has consistently recognized the right of each producer to choose whether to make an interstate or intrastate sale of its own gas. (*See, e.g.*, A. 710).

[17] Section 7(b), 15 U.S.C. § 717f(b). Thus in *CATCO, Atlantic Refining Co.* v. *Public Serv. Comm'n*, 360 U.S. 378, 389 (1959), this Court stated:

> Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval.

[18] Under an ordinary oil and gas lease the leasehold interest continues indefinitely, *i.e.*, so long as oil or gas is produced in paying quantities. By contrast Gulf's Waddell Ranch leasehold interest expired on the date prescribed in its lease. Of course, such fixed-term oil and gas leases have not been used for many years. *See* note 1, *supra*.

Moreover, it is not unusual for a producer to vertically limit the leasehold gas it dedicates to an interstate sale to its interest in gas produced from specified formations or from all formations located between the surface and a specified depth. If a producer so limits its initial dedication, its interest in gas produced from other formations or depths is unquestionably free of any interstate dedication. Likewise, it is not unusual for a producer to horizontally limit the leasehold gas it dedicates to an interstate sale to the gas produced from a specified portion of a leasehold held by the producer. For example, if the producer holds a lease on 1,000 acres, it may choose to dedicate only its leasehold interest in 500 acres of the tract. It is unquestioned that if the producer so limits its interstate dedication of gas, it remains free to make an intrastate sale of the leasehold gas produced from the remaining 500 acres of the tract covered by its lease.

In the instant case, there was a severance of interests in gas underlying the Waddell Ranch, between Gulf and Southland Royalty. The severance between a fixed-term leasehold interest and a mineral fee interest is a severance in time,[19] rather than a horizontal or vertical severance in space. But as noted by the court below the severance here was just as complete as if it had been spatial:

> The estates in the single tract are as separate as though they subsisted in separate parcels of land.

543 F.2d at 1137.

If Gulf and Southland Royalty had each owned a fifty percent leasehold interest in the Waddell Ranch at the same time, there could be no claim that Gulf's interstate sale of Gulf's gas dedicated Southland Royalty's gas to interstate service under the Natural Gas Act. (A. 710). But in this case the Commission held that a contrary result

[19] The legal interest in perpetuity in all oil and gas under specific acreage is commonly called the "mineral fee interest" and is clearly distinguishable from the leasehold interest created by an oil and gas lease because under such a lease "[t]he lessee's privileges of taking are limited by the duration of the lease." 1A W. Summers, The Law of Oil & Gas § 132 at 210 (1959).

should be reached where Gulf owned a fifty year fixed-term leasehold and Southland Royalty contemporaneously owned an entirely separate mineral fee interest under which its gas was to be produced and sold after Gulf's lease expired. The Commission held that Southland Royalty's gas was dedicated to interstate service because Gulf had made an interstate sale of Gulf's leasehold gas. Whether Gulf thus dedicated Southland Royalty's gas is the issue before this Court.

B. The Controlling Issue Is Whether Gulf Dedicated Southland Royalty's Gas.

On the basis of its holding that Southland Royalty's Waddell Ranch gas had been dedicated to interstate service, the Commission prohibited Southland Royalty from selling such gas to the intrastate purchaser of its choice, without first obtaining abandonment authorization under Section 7(b). If Southland Royalty's gas had in fact been dedicated to El Paso, then the Commission would be correct: Southland Royalty would have to obtain abandonment authorization in order to sell its gas to another purchaser. Southland Royalty recognizes that "once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval."[20]

The Commission claims that the court of appeals attacked this "fundamental premise of the Act" (FPC at 11) by holding that Southland Royalty et al. are "free to withdraw their gas from interstate commerce." (FPC at 10). This simply misstates the court's holding; the court of appeals held that Southland Royalty's gas is not and never was dedicated to interstate commerce.[21] Similarly,

[20] *CATCO, Atlantic Refining Co.* v. *Public Serv. Comm'n*, 360 U.S. 378, 389 (1959).

[21] The court of appeals noted the Commission's holding that Southland Royalty's "reversionary interest had been dedicated to interstate commerce by the lessee." The court then framed the question presented as whether the lessee, "by making certificated

El Paso claims that this case involves the "question of whether the expiration of a lease frees [Southland Royalty's gas] from the interstate market" (El Paso at 11), and California claims that the issue "is the extent to which natural gas reserves, once dedicated to interstate commerce, can be withdrawn from interstate commerce" (Calif. at 10).[22] On the contrary, the issue is whether Southland Royalty's gas has ever been dedicated to the interstate market. If Southland Royalty's gas was never dedicated, the court of appeals' decision does not "free" it or permit it to be "withdrawn" from interstate dedication.

More specifically, the issue before this Court is whether Southland Royalty's mineral fee gas was dedicated to interstate service *as a result of Gulf's sale of Gulf's leasehold gas.* It is uncontested that Southland Royalty has not itself made any interstate sale of its mineral fee gas.[23] It is also settled beyond dispute that Southland Royalty was not a "natural-gas company" performing an interstate "service" subject to the Commission's jurisdiction

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sales of leasehold natural gas in interstate commerce, thereby dedicate[d] to interstate commerce gas which remains in the ground" after the expiration of the lease. The court answered this question in the negative. 543 F.2d at 1136.

[22] Since these "withdrawal claims" merely beg the dedication question, it is perhaps unimportant that the Commission et al. grossly exaggerate the amount and significance of the "dedicated" gas they claim will be withdrawn. First, this case involves a miniscule fraction of U.S. marketed natural gas production. Southland Royalty pointed this out in its brief in opposition to the petitions for certiorari (at 11, n.27) and none of the petitioners has attempted to refute this calculation. Second, the other three fixed-term lease expiration cases referred to by the Commission et al. involve, cumulatively, less gas than the present case. (The Commission et al. attempt to exaggerate the number of such cases by citing separately every Commission and court docket concerning them. They do not, however, deny that in fact there are only three such cases.) Third, the gas is not "critically needed" but would in fact go for what California admits are "low-priority customers." (Calif. Pet. at 7).

[23] Except, of course, for the involuntary sale that Southland Royalty is making under compulsion of the Commission's orders and under a protective order which provides that the involuntary sale does not itself constitute a dedication.

under the Natural Gas Act simply because it received royalties paid by a lessee who was making an interstate sale. *Mobil Oil Corp.* v. *FPC,* 463 F.2d 256 (D.C. Cir. 1971), *cert. denied,* 406 U.S. 976 (1972).[24] Finally, it is undisputed that Gulf sold only its leasehold gas to El Paso, not Southland Royalty's mineral fee interest gas.[25]

In short, the court of appeals can be reversed and the Commission's orders sustained only if Gulf had "power to encumber" Southland Royalty's mineral fee interest with an interstate dedication and exercised this alleged power by selling its own leasehold gas. The Commission claims such power is conferred by the Natural Gas Act. That is, the Commission contends that under the Natural Gas Act, a producer who makes an interstate sale dedicates all gas from the acreage in question, regardless of limitations on his ownership interest, and thereby creates an encumbrance which outlasts the term of his lease. Nothing in the Act or its legislative history supports such a radical construction.

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[24] New York intimates that Southland Royalty is attempting to exercise a "right to terminate an ongoing sale," thereby "converting [its] royalty interest into that of a participant in the sale," and thus possibly qualifying under *Mobil* as a "natural-gas company." (N.Y. at 4.) The suggestion is incorrect. Gulf's lease expired. Southland Royalty did not "convert" its royalty interest into a share of Gulf's lease or Gulf's sale. Southland Royalty is not attempting to terminate Gulf's sale, which continues pursuant to its terms through Gulf's delivery of gas from other leasehold interests. Gulf never sold any Waddell Ranch gas to El Paso other than its leasehold gas, and when Gulf's lease expired, Gulf had no more such gas to sell.

[25] There is no dispute that "Gulf attempted no dedication of gas beyond the interests it owned." (A. 457).

II. GULF COULD NOT ENCUMBER SOUTHLAND ROYALTY'S GAS WITH AN INTERSTATE SERVICE OBLIGATION.

A. Under The Natural Gas Act, A Lessee Cannot Dedicate Gas He Does Not Own.

1. Language and legislative history.

The Commission et al. argue that under the Natural Gas Act a lessee has the power to dedicate to interstate service gas in which it has never had any ownership or other interest. Specifically, they argue that simply by making an interstate sale of its leasehold gas, Gulf dedicated Southland Royalty's gas to an interstate "service" which, under Section 7(b), "[n]o natural-gas company shall abandon" without Commission authorization. Consideration of whether Southland Royalty is a "natural-gas company" and whether its gas was dedicated by Gulf to interstate service "must of course begin with the language of the Act itself."[26]

A "natural-gas company" is expressly defined in the Act as a "person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." 15 U.S.C. § 717a(6). Gulf was found in 1956 to be a "natural-gas company" with respect to its Waddell Ranch gas because Gulf engaged in an interstate sale of its leashold gas to El Paso. But Southland Royalty has not at any time been a "natural-gas company" with respect to its Waddell Ranch gas, because it neither engaged in Gulf's interstate sale of Gulf's gas nor engaged in any sale of its own gas to El Paso (except the involuntary sale it is making pursuant to the Commission's protective order).

"Service" is not expressly defined in the Natural Gas Act. This Court has, however, indicated that "service" refers to an interstate "transportation or sale of natural gas" for which Section 7(c) requires any "natural-gas company" to obtain a certificate of public convenience and

[26] *Chemehuevi Tribe of Indians* v. *FPC*, 420 U.S. 395 (1975).

necessity. *See Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 149-50 (1960). The Commission maintains that, when Gulf applied for and received a certificate to make an interstate sale of its Waddell Ranch leasehold gas to El Paso, Gulf thereby committed to interstate "service" all gas which might ever be produced from the Waddell Ranch, including Southland Royalty's gas to be found and produced after the expiration of Gulf's lease.

The very language of Section 7(e), which governs Commission action upon certificate applications, refutes any such suggestion. Under Section 7(e), the Commission cannot issue a certificate unless it finds that "the applicant is able and willing properly to do the acts and to perform the service proposed . . . ." If, as the Commission contends, the "service proposed" was that of selling *all* gas ever found and produced from the Waddell Ranch, Gulf was never "able" to perform the service proposed. Not even the Commission contends that it found in 1956 that *Gulf* could sell Waddell Ranch gas to El Paso after the expiration of Gulf's lease.

Moreover, Gulf was never "willing" and was never found to be "willing" to sell Southland Royalty's gas to El Paso in interstate commerce. Gulf applied for a certificate covering only "Seller's surplus residue gas." (A. 3, 43). Gulf knew it would have no "Seller's surplus residue gas" attributable to the Waddell Ranch lease upon the expiration of its lease. (It does, of course, have such gas from other sources and, therefore, continues to sell "Seller's surplus residue gas" to El Paso.) Accordingly, Gulf never attempted any dedication of Waddell Ranch gas beyond the leasehold gas it owned. (A. 457).

The Commission itself has honored this construction of the Act in other cases. In a recent decision, it recognized that a producer cannot be forced to "dedicate more to interstate commerce than it wanted to."[27] If that is so,

[27] *Cities Serv. Oil Co.*, Opinion No. 820, FPC Docket Nos. CI75-191 and CI75-489, issued September 20, 1977, at 6. The case involved

surely, Gulf cannot have initially dedicated more to interstate commerce than Gulf either owned or intended to dedicate.

Thus, the Commission's interpretation of the Natural Gas Act — that it authorized Gulf to dedicate Southland Royalty's gas to interstate commerce — has no support in the language of the Act. Gulf was neither "able" nor "willing" to commit Southland Royalty's mineral fee interest to Gulf's sale to El Paso.

Further, an interpretation of the Act under which a private party like Gulf could dedicate to interstate service property in which it had no ownership or other interest would raise a constitutional question of taking of property without due process of law. Such a construction should not be read into the Act.

The legislative history of the Act does not "add a gloss to the operative language of the statute quite different from [the] commonly accepted meaning"[28] of the terms "able" and "willing." The Act set out to "provide for regulation along recognized and more or less standardized lines. There is nothing novel in its provisions . . . ."[29] There is no reason to doubt that these standardized provisions included the concept by which service had always been "dedicated to the public under common law."[30] There is nothing in the legislative history even to suggest the radical innovation of authorizing a lessee to dedicate more than his leasehold interest to interstate service.

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sales from offshore federal waters by two producers who initially "dedicated one-half of their respective interests and no more." The Commission Staff urged the Commission to require the producers to continue to sell the rest of their gas, from the other one-half leasehold interest, at the same old contract price. The Commission stated that if it were to follow this suggestion, ". . . then we would be in a position of having forced the producers to dedicate their retained one-half interest to [the pipeline]. *This we cannot do.*" *Id.* (emphasis supplied).

[28] *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 199 (1976).

[29] H.R. Rep. No. 709, 75th Cong., 1st Sess. 3 (1937).

[30] *Cf. Hearing on H.R. 4008 Before the House Comm. on Interstate & Foreign Commerce*, 75th Cong., 1st Sess. 40 (1937) (Testimony of Harry R. Booth).

2. **Sunray, Sun and CATCO.**

Unable to support their position by reference to the language or the legislative history of the Act, the Commission et al. rely on language from this Court's decisions in *Sunray*, 364 U.S. 137, and *Sun Oil Co.* v. *FPC*, 364 U.S. 170 (1960), which in turn quote from *CATCO, Atlantic Refining Co.* v. *Public Serv. Comm'n*, 360 U.S. 378 (1959). This reliance is misplaced. These cases simply state that a producer who makes an interstate sale under a certificate of public convenience and necessity granted pursuant to Section 7(e) must sell all *his* reserves committed to that sale, unless he first obtains abandonment authorization.[31]

The Commission et al. rely particularly on *Sunray*.[32] This Court has recently summarized its holding in *Sunray*: the Commission "had authority to *tender* a certificate of public convenience and necessity without time limitation to a producer who applied for a certificate authorizing sales for 20 years only," as provided in its contract.[33] That is, *Sunray* did not even hold that the Commission could force a producer to sell its *own* gas to an interstate pipeline, much less gas in which the producer never had any ownership or other interest.

On the contrary, the Court recognized that a producer/certificate applicant has an "undoubted right to stand firm on its own application, and reject the proffered certificate." *Sunray*, 364 U.S. at 141. The Court pointed out that Sunray "did not avail itself" of this right, but "accepted the Commission's certificate and commenced deliveries of gas under it." *Id.* Having done so, Sunray dedicated all its gas, and "once so dedicated" Sunray's gas could not be withdrawn from the interstate service Sunray

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[31] While discussing these cases the Commission admitted that it had "discovered no case directly in point." (A. 605).

[32] California even claims that the present case is "explicitly covered" by *Sunray* (Calif. at 20).

[33] *FPC* v. *Moss*, 424 U.S. 494, 503 (1976) (emphasis supplied).

had commenced. *Id.* at 156, quoting from *CATCO*, 360 U.S. at 389.

But Sunray did not thereby dedicate any gas other than its own gas. The case involved only Sunray's attempt to retain for the future a right to make a new sale of its *own* gas — the gas attributable to "all lands, leaseholds and units or parts thereof owned by seller" in a defined area and committed to the contract. *Sunray* v. *Mid-Continent Oil Co.*, 19 FPC 618, 624, 635 (1958). *Sun* and *CATCO* are similar in this crucial respect.

In addition, *Sunray*, *Sun* and *CATCO* each involved *ordinary* oil and gas leases,[34] under which the leasehold estate remains in effect as long as gas is produced in paying quantities.[35] Thus, in each of these cases, once the producer/certificate applicant had "so dedicated" his leasehold gas to interstate service, there could be no withdrawal of "that supply" from interstate service unless he first obtained abandonment authorization. These cases do not hold or even suggest that when the owner of a rare fixed-term lease, like Gulf, commences a sale of its leasehold gas under a Commission certificate, it also dedicates to interstate commerce the mineral fee owners' gas.

The Commission et al. recognize that *Sunray* involved a producer whose leasehold ownership interest continued indefinitely but whose contract for the sale of his leasehold gas to his pipeline purchaser expired. They contend, however, that the result is the same where a lessee commences an interstate sale to a pipeline and his lease expires, citing *Rayne Field, United Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392 (1965). The Commission says that the producers in *Rayne Field* commenced production and interstate sales of gas from their leases, became subject to regulation under *Phillips*, attempted to evade regulation by substituting the pipeline as owner of the leases, and were held

[34] *See* the record in each case: *Sunray*, R. 15-17, 25, 26; *Sun*, R. 62-71; *CATCO*, R. 489, 494-96.

[35] 2 E. KUNTZ, LAW OF OIL & GAS § 26.1 at 244 (1964); 1A W. SUMMERS, THE LAW OF OIL & GAS § 153 at 381 (1959).

bound not to withdraw their dedicated gas "regardless of intervening changes in property rights" and "regardless of of 'technical concepts of local law.'" (FPC at 11, 18 n.20).

This is a gross mischaracterization of the facts and holding in *Rayne Field*. What actually occurred was that, three years after *Phillips*, the lessees who developed the Rayne Field entered into conventional gas contracts to sell their Rayne Field gas to an interstate pipeline. They duly applied for certificates, but they did not commence interstate deliveries. When the court of appeals in *CATCO* held that a price even lower than their proposed price was too high, they withdrew their applications and sold and assigned their Rayne Field leases to the pipeline, which commenced taking the gas into its interstate pipeline system. This Court held that the producers' sale to an interstate pipeline of their leasehold interests in proven and substantially developed reserves amounted to an interstate sale of gas for resale, and that the Commission could therefore regulate the leasehold sale. Obviously *Rayne Field* is a far cry from the "very situation presented" (FPC at 18 n.20) in *Sunray*, much less the situation presented in this case.

To the extent that any of these cases do shed light on whether Gulf could dedicate Southland Royalty's gas, they suggest that it could not. Southland Royalty has never applied for a certificate for the interstate sale of its Waddell Ranch gas, nor has it had any obligation to apply for a certificate, since it has never chosen to make an interstate sale of its gas. Thus it has never had the opportunity to exercise the undoubted right of a producer which proposes to engage in an interstate sale of its gas "to stand firm on its own application, and reject the proffered certificate," and market its gas elsewhere if it chooses.

The Commission responds that Southland Royalty has in effect had a chance to decide where to sell its mineral fee gas, because it was not "powerless to prevent Gulf

from dedicating the leasehold gas" to El Paso. (FPC at 20). This is wrong, and the Commission knows it is wrong. The Commission itself told the court of appeals that Southland Royalty "could not prevent Gulf's total dedication of surplus residue gas to El Paso." (FPC 5th Cir. Br. at 16-17). Furthermore, the Commission's response is irrelevant. As noted by the court of appeals, Southland Royalty could not know it was supposed to intervene in opposition to Gulf's application for a certificate covering Gulf's sale of *leasehold* gas, or reject royalties on the sale of Gulf's *leasehold* gas — because Southland Royalty had no reason to believe that Gulf was thereby dedicating the *mineral fee* gas, which Gulf did not own and was not attempting to dedicate. 543 F.2d at 1139.

3. **Southland Royalty is not a "successor" to Gulf's dedication of Gulf's leasehold gas.**

The Commission also claims that Southland Royalty is a "successor-in-interest" to Gulf,[36] and therefore is bound by Gulf's dedication of Gulf's leasehold gas (FPC at 20), citing Commission decisions in *Cumberland Natural Gas Co.*, 34 FPC 132 (1965), and *Blair-Vreeland*, 53 FPC 843, Opinion No. 724 (1975), *rev'd sub nom. Vreeland* v. *FPC*, 528 F.2d 1343 (5th Cir. 1976). The short answer to this claim is that Southland Royalty is not a successor to Gulf's leasehold interest. 543 F.2d at 1138.

[36] The Commission has telegraphed its own uncertainty about this theory by vacillating throughout this case on whether to portray Southland Royalty as a "successor" to Gulf. In its initial opinion, the Commission said that upon the expiration of Gulf's lease Gulf's "rights pass" to Southland Royalty, but that "gas may not be withdrawn from interstate commerce by the assignment of leases from one lessee to another." It then cited its own successor-in-interest decisions. (A. 606). But the Commission then immediately stated that "we do not rest our conclusion on these cases." (*Id.*) On rehearing, the Commission reversed its field and said that it was holding that service cannot be "discontinued by transfer to a successor interest." (A. 711). In the court of appeals, the Commission dropped the successor argument again, never mentioning it. The Commission now advances the claim once more, though with apparent lack of confidence: its principal discussion is appended to its Interstate Commerce Act section. (*See* FPC at 28-29).

The two cases cited by the Commission, like every other Commission successor-in-interest decision,[37] involved the assignment of an ordinary leasehold interest under which the lessee's interest continued indefinitely. That is, the lessee had committed his leasehold interest to interstate service, and later assigned that very same leasehold interest to another producer. When an assignee voluntarily acquires a dedicated leasehold estate, he "steps into the shoes of his predecessor [and] takes the properties . . . subject to any benefits and infirmities therein."[38] Indeed, normally the assignee expressly assumes his assignor's obligations.[39] Since the assignee voluntarily acquires a dedicated lease, he voluntarily undertakes the obligation of making an interstate sale of the leasehold gas.

In this case, Gulf dedicated to El Paso the casinghead gas attributable to Gulf's fixed-term leasehold interest. Gulf sold all of this leasehold gas to El Paso. Gulf's lease expired. Southland Royalty did not acquire Gulf's lease, voluntarily or otherwise; Gulf's leasehold rights were not assigned or otherwise transferred to Southland Royalty. In short, Southland Royalty has never owned or acquired any part of the Waddell Ranch leasehold interest which Gulf dedicated to interstate service. Thus, it cannot be held that Southland Royalty stepped into Gulf's shoes or is a "successor" to Gulf or is in any way bound by Gulf's dedication of Gulf's lease.

[37] *See, e.g., Mitchell Energy Corp.*, 53 FPC —, Opinion No. 733, FPC Docket No. CI75-236, issued June 11, 1975, *aff'd*, 533 F.2d 258 (5th Cir. 1976); *Graridge Corp.*, 30 FPC 1156 (1963).

[38] *Graridge Corp.*, 30 FPC at 1162.

[39] In *Mitchell Energy Corp., supra* n. 37, for instance, Mitchell Energy acquired a lease by assignment under which it agreed to perform "all of the future obligations which would have been validly imposed on assignor by any contract, lease, franchise, license, certificate, undertaking or agreement relating to the property or interests hereby transferred and assigned." Opinion No. 733 at 2. Likewise, in *Blair-Vreeland*, "Vreeland's agreements with [the assignor of its leasehold interest] were and are explicitly subject to existing encumbrances." Opinion No. 724 at 12.

Nor can the Commission show that Southland Royalty is a successor-in-interest to Gulf by asserting (FPC at 8 and 16 n.17) that Gulf's service obligation "is like an ancient covenant running with the land" and citing *Hunt* v. *FPC*, 306 F.2d 334, 342 (5th Cir. 1962), *rev'd on other grounds*, 376 U.S. 515 (1964). A common-law covenant can be enforced against a successor-in-interest to the covenantor, but not against one who does not succeed to the covenantor's estate.[40] That is, under property law the "land" with which a lessee's interstate service obligation runs is his leasehold interest.[41] Southland Royalty did not succeed to Gulf's leasehold estate, and therefore is not bound by Gulf's dedication of Gulf's gas.

The distinction between the successor-in-interest cases and this case was clearly drawn in the decision below, 543 F.2d at 1138, and by the Tenth Circuit in a very recent decision, *Phillips Petroleum Co.* v. *FPC*, 556 F.2d 466, 470-71 (10th Cir. 1977). The *Phillips* decision applies the successor-in-interest doctrine to a "farmout" type of lease assignment, where the Commission itself originally had refused to apply it.[42]

In *Phillips*, Phillips farmed out (entered into a contract to assign) its leasehold interest in certain acreage to Goldston. Goldston drilled on the lease it acquired from Phillips, thus earning the right under the contract to an assignment

[40] *See* 2 AMERICAN LAW OF PROPERTY § 9.15 at 384 (1952): "There has never been any serious question of the rule that the assignee of the covenantor must succeed to the estate of the covenantor in order to be liable upon the burden of the covenant." *See generally* CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH THE LAND" at 111-15 (2d ed. 1947).

[41] In *Hunt*, the court of appeals spoke of land, not a lease, because that case, like every case prior to this one, involved an ordinary lease, capable of lasting indefinitely. Thus, the interstate covenant, although it ran with the lease, appeared to run with the land because it lasted as long as the reserves in question lasted.

[42] *El Paso Natural Gas Co.* v. *Bass*, 48 FPC 1269 (1972). Contrary to the Commission's statement (FPC at 8 n.10), *Bass* did not involve a lease which "gave the lessor the option, after the lessee recovered its drilling costs, to receive in lieu of royalty a one-half

of Phillips' lease. Goldston found gas, was assigned Phillips' leasehold interest and sold the gas attributable to the assigned leasehold to an interstate pipeline. In the farmout contract, Phillips retained an overriding royalty interest (a royalty in addition to the lessor's royalty) with an option to convert its overriding royalty into a partial working interest (a share of the original lease) if the well "paid out" (produced enough to cover Goldston's costs). The well paid out, and Phillips subsequently elected to convert its override, thus regaining by reassignment a partial share of the original leasehold that it had transferred to Goldston. Phillips then sought to sell its share of the leasehold gas to the same interstate pipeline at the higher "new gas" price. The Commission denied Phillips the higher price, holding that Phillips was a successor-in-interest to Goldston's dedication of the entire lease.

The Tenth Circuit affirmed, pointing out that Phillips was a "subsequent holder" of leasehold rights acquired from Goldston, who had encumbered the leasehold estate, and therefore was subject to all of the burdens validly created by its predecessor in interest. For this proposition, the Tenth Circuit cited the court of appeals' decision in this case with approval. *See* 556 F.2d at 470-71, relying on and agreeing with *Southland Royalty Co.* v. *FPC*, 543 F.2d 1134, 1138 (5th Cir. 1976). The Tenth Circuit also pointed out that *"Southland* is distinguishable from the present case," because in *Phillips* Goldston had the power to dedicate the entire lease, including the portion it later reassigned to Phillips, whereas in this case Gulf never had

[illegible]erest in the gas produced." Like *Phillips*, which overruled *Bass*, *Bass* actually involved a contract between a lessee and another producer to whom the lessee agreed to assign his lease, retaining the option to require a partial reassignment. As in *Phillips*, the assignee dedicated the entire leasehold interest to an interstate sale. The assignor then exercised his contractual option to require a partial reassignment, and subsequently tried to make a new sale of the gas attributable to the reassigned share of the dedicated leasehold.

the power to dedicate Southland Royalty's completely separate property interest. 556 F.2d at 470.[43]

4. Southland Royalty did not ratify or consent to dedication of its gas.

In effect conceding Gulf's legal inability to dedicate Southland Royalty's gas to interstate service, the Commission falls back on an argument that Southland Royalty consented to or ratified Gulf's alleged dedication of Southland Royalty's gas. In particular, the Commission refers to Southland Royalty's acceptance of royalties on Gulf's sale and lack of opposition to Gulf's certificate application. *See* FPC at 9, 20, 34. The court of appeals correctly recognized that neither Southland Royalty's lack of opposition to Gulf's certificate application nor its acceptance of a fixed royalty could possibly be construed as "ratifying" the interstate sale or authorizing the interstate dedication of Southland Royalty's gas. As the court below pointed out, "[r]atification implies knowing choice," 543 F.2d at 1139. However, Southland Royalty "could not have known it would be claimed" that Gulf's dedication of Gulf's gas dedicated Southland Royalty's gas. *Id.* Moreover, Southland Royalty "could not control" Gulf's sale of Gulf's leasehold gas and by accepting the fixed royalty provided by the lease on any such sale Southland Royalty took no action inconsistent with its position as a mineral fee owner or which subjected Southland Royalty to Commission jurisdiction. *Mobil Oil Corp.* v. *FPC*, 463 F.2d 256 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 976 (1972).[44] The Commission tries to distinguish

[43] That is, the Tenth Circuit recognized that *Southland* involved two entirely separate and independent property interests; whereas *Phillips* involved an assignment of a leasehold interest, the interstate dedication of that same leasehold interest by the assignee, and the reassignment of a part of the dedicated leasehold interest to the assignor.

[44] In *Mobil Oil Corp.*, *supra* the court of appeals reversed the Commission's assertion of jurisdiction over royalty owners which received royalty payments based on interstate sales of gas by their lessees. The court held that a royalty owner is not a "natural-gas company" as defined in the Natural Gas Act because he does not engage in a "sale" in interstate commerce.

Certiorari was recently denied in *Lightcap* v. *Mobile Oil Corp.*, 562 P.2d 1 (Kan.), *cert. denied*, 46 U.S.L.W. 3219 (U.S. Oct. 3, 1977) (No. 76-1694), in which the Kansas Supreme Court relied on *Mobil Oil Corp.* to support its holding that courts have jurisdiction to order royalties to be based on a higher rate than the rate the Commission approves for interstate sales of gas by the lessee.

Mobil Oil Corp. on the ground that "[t]he court did not consider whether, on termination of the leases, such former lessors who succeed to the interest of their natural gas company lessees would be natural gas companies within the meaning of the Act . . ." (FPC at 29). Of course, Southland Royalty did not succeed to Gulf's leasehold interest or Gulf's sale of Gulf's leasehold gas, so the assumption underlying the Commission's attempted distinction is wrong. Further, the precise holding in *Mobil Oil Corp.* was that a lessor which demands and receives market value royalties on its lessee's interstate sale of leasehold gas does not thereby become a "natural-gas company" engaged in the lessee's interstate sale. The Commission does not even try to explain how, in the light of *Mobil Oil Corp.*, it can argue that Southland Royalty became a "natural-gas company" engaged in Gulf's interstate sale by accepting below-market value royalties on Gulf's sale of Gulf's leasehold gas.

B. Under Well Established Property Law, A Lessee Cannot Dedicate Gas He Does Not Own.

In the court of appeals, the Commission's principal argument was that Gulf had the power *under Gulf's lease* to encumber Southland Royalty's mineral fee estate with an interstate dedication.[45] In response to the Commission's argument, the court of appeals concluded that, under well established principles of property law, Gulf as a tenant for years had no power to legally deal in or dedicate South-

[45] Thus, the Commission informed the court of appeals that:

> What the Commission has determined is that Gulf's leases empowered it to dedicate to interstate service all the surplus residue gas from the subject acreage, and the "service" obligation continued despite the termination of Gulf's leases.

land Royalty's estate.[46] This decision is demonstrably correct.

It is universal Anglo-American real property law that one who has a present interest in real property which is limited in duration cannot enter into agreements that are binding upon the reversioner. *See, e.g.*, 2 R. POWELL, THE LAW OF REAL PROPERTY ¶ 247 [1] (Rohan ed. 1977). This doctrine has been described by one eminent authority as a "self-evident principle."[47] The self-evident principle that one cannot encumber a property interest one does not own has been applied in every context in which the question has arisen, and in every jurisdiction. It applies to fiduciaries, including executors, administrators, guardians and trust-

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FPC 5th Cir. Br. at 16-17. Likewise, the Commission asserted that:

> In the instant case, Gulf had complete authority under the lease to dedicate all the gas reserves of the Waddell and Goldsmith Fields and did so.

Id. at 17-18. Even now, the Commission asserts that "Gulf clearly had authority under its leases to develop and sell *the gas* to interstate purchasers." (FPC at 17, emphasis supplied). The question of course is whether Gulf had authority to sell and dedicate Southland Royalty's gas – gas produced after Gulf's lease terminated.

[46] This approach would have been reasonable even if the Commission had relied on the Natural Gas Act: " 'The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state.' . . . This is particularly true with respect to real property." *State Land Board* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378-79 (1977).

[47] 1 H. TIFFANY, THE LAW OF REAL PROPERTY § 153 at 247 (3d ed. 1939). Tiffany states this principle as follows:

> In the absence of a statutory power or of an express power to that effect in the creation of the estate, one having a limited estate in land cannot, as against the person entitled in reversion or remainder, create an estate to endure beyond the normal time for termination of his own estate.

As detailed in Part II A. of this brief, *supra* at 16-27, Gulf had no statutory power to create an estate that could endure beyond the normal time for the termination of its fixed-term lease.

ees,[48] life tenants[49] and lessees for a term of years,[50] including a mineral lessee for a term of years.[51]

From the principle that one cannot encumber what one does not own, it follows that one cannot dedicate what one does not own. Thus, " . . . a person cannot dedicate interests over which he has no control . . . ." 4 H. TIFFANY, THE LAW OF REAL PROPERTY § 1100 (3d ed. 1975). In short, under unquestioned principles of property law, Gulf could not have dedicated to interstate service Southland Royalty's gas.

The property law principle under which Gulf could not dedicate Southland Royalty's gas is no mere matter of "local Texas law." On the contrary, as the court of appeals pointed out, it is "black letter law," applicable everywhere. 543 F.2d at 1137. At no time in this proceeding have the Commission et al. cited a single case from any jurisdiction which shows that Gulf had the power under property law to dedicate Southland Royalty's mineral fee to interstate service. Finally, this principle is no "technical legal dis-

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[48] *See O'Connor* v. *Chiascione*, 130 Conn. 304, 33 A.2d 336 (1943) and cases cited in Annot., 95 A.L.R.2d 258, 293-96 (1964) (executors and administrators); *Davis* v. *Kressly*, 80 S.D. 254, 122 N.W.2d 219 (1963) and cases cited in Annot., 6 A.L.R.3d 570 (1966) (guardians); *Patterson* v. *Polk*, 229 Ark. 272, 317 S.W.2d 286 (1958); *Wingert* v. *T. W. Phillips Gas & Oil Co.*, 398 Pa. 100, 157 A.2d 92 (1959) and cases cited in Annot., 67 A.L.R.2d 978 (1959) (trustees).

[49] *See, e.g., Haywood* v. *Briggs*, 227 N.C. 108, 41 S.E.2d 289, 171 A.L.R. 480 (1947). "The life tenant could not create an estate to endure beyond the termination of her own estate . . . ." 41 S.E. 2d at 292. *See generally* 2 R. POWELL, THE LAW OF REAL PROPERTY ¶ 203[3] at 130-31 (Rohan ed. 1977).

[50] *See* 2 R. POWELL, THE LAW OF REAL PROPERTY ¶ 247[1] (Rohan ed. 1977).

[51] "The owner of a term for years cannot create an interest in land to endure beyond the term. It would follow that the owner of minerals could not create an interest to endure beyond his fixed term." 2 H. WILLIAMS & C. MEYERS, OIL & GAS LAW § 332 at 117 (1975).

tinction" but involves fundamental property law of universal applicability.[52]

III. THE HOLDING OF THE COURT OF APPEALS IS CONSISTENT WITH SETTLED CONSTRUCTION OF THE INTERSTATE COMMERCE ACT.

Unable to find support for its position in the language or legislative history of the Natural Gas Act, or in the cases construing it, the Commission for the first time argues that the holding of the court of appeals is contrary to "settled construction" of the "parallel" abandonment provision of the Interstate Commerce Act, Section 1(18), 49 U.S.C. § 1(18).[53] This argument involves two contentions: First, that Sections 7(b) and 1(18) and the two industries are parallel in all material respects; second, that under the Interstate Commerce Act a lessee who initiates interstate railroad service thereby dedicates his lessor's interest to interstate service. Both contentions are erroneous.

A. Railroad Leases, Service And Abandonments Differ Materially From Natural Gas Leases, Interstate Producer Sales And Abandonments.

The provisions of Section 7(b) and 1(18) are not "parallel."[54] The differences are substantive. For instance, under

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[52] "[W]hen anyone, including the Federal Government, goes into a State and acquires real property, the nature and extent of the rights created are to be determined, in the absence of a specifically applicable federal statute, by the law of the State." *United States* v. *Little Lake Misere Land Co.*, 412 U.S. 580, 605 (1973) (Stewart, J., concurring in the judgment). The holding of the Court was that Louisiana could not retroactively deprive the United States of a possibility of reverter that the United States had retained when it executed a mineral lease on acreage the United States owned.

[53] The Commission did not raise this argument until it petitioned for certiorari.

[54] It is also incorrect to contend that Section 7(b) "originated with" and was "modeled on" the proposed Benton amendment, which Benton said was drawn from Section 1(18), to H.R. 11662, 74th Cong., 2d Sess. (1936), precursor of the Natural Gas Act. The Benton amendment to H.R. 11662 was never adopted, and in fact Section 7(b) originated with an earlier bill, H.R. 5423, 74th Cong., 1st Sess., § 305(b) (1935), whose language is very different from the Benton amendment.

Section 7(b), only the "natural-gas company" which is performing the "service" of making an interstate sale may obtain authorization to abandon its sale. But under Section 1(18) abandonment of a railroad's service may be obtained by any party, including the railroad's lessor.[55] This and other statutory differences result from fundamental differences between the uses of leases in the two industries.

Almost every railroad is an interstate "carrier by railroad" which throughout its operations is subject to Interstate Commerce Commission (ICC) jurisdiction.[56] Early in their history, such railroads entered into long, usually fixed-term leases "as a convenient means of combining two or more independently operated railroads."[57] According to commentators who have reviewed all of the approximately two hundred of these "leases," the "essential idea" was a complete conveyance of one operating railroad to another — rolling stock, contracts and all.[58] For this reason, "a standard covenant" of the railroad "lease" was the lessee's "promise to discharge the duties imposed by law upon the lessor, such as its duty as a common carrier."[59]

Relatively late in their history, operating railroads also began to enter into "leases" and trackage agreements which had short terms or were terminable at will. Since lease rentals were "an important part of the fixed charges of many railroads,"[60] the flexibility of these arrangements made them economically attractive to the "lessees" as well as the "lessors."

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[55] Hence the reference in *Thompson* v. *Texas Mexican Ry.*, 328 U.S. 134, 145 (1946).

[56] *See* 49 U.S.C. § § 1(1), 1(18) and CHERINGTON, THE REGULATION OF RAILROAD ABANDONMENTS 43-58 (1948).

[57] Meck, *The Problems of The Leased Line*, 7 LAW & CONTEMP. PROBS. 509, 510 (1940).

[58] Meck & Masten, *Railroad Leases and Reorganizations: I*, 49 YALE L.J. 626, 632 (1940).

[59] *Id. at* 635 n.37.

[60] Meck, *supra*, at 509.

Under these circumstances, it might not have been unreasonable to interpret Section 1(18) to permit the ICC to require a railroad "lessor" to resume a common carrier service it had undertaken but then "leased" to another railroad, but the question was regarded as a close and doubtful one.[61] As the railroad industry went into a marked decline with the onset of the great depression, and railroad bankruptcies and reorganizations became more common, Congress addressed the problem directly. Paragraph (c)(6) of Section 77 of the Bankruptcy Act, 11 U.S.C. § 205, added by the Railroad Reorganization Act Amendments of 1933, provided that if a lessee goes into Section 77 proceedings and elects not to operate the leased line, "it shall be the duty of the lessor ... to begin operation of such line" unless the bankruptcy judge finds this would be impracticable. In that event the lessee must continue operations "on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of [the Interstate Commerce Act]."

Interstate pipelines are roughly analogous to interstate railroads, but oil and gas leases and interstate gas sales by producers are vastly different from railroad leases and service. No producer who sells natural gas is a "natural-gas company" subject to Commission jurisdiction under the Natural Gas Act with respect to a particular sale unless that particular sale is a sale for resale in interstate commerce. Under an oil and gas lease the lessor creates and conveys a genuine real property interest; he is not a seller of natural gas when he executes the lease; he is not a "natural-gas company" by reason of the lease; he therefore transfers no "natural-gas company" obligations to the lessee, comparable to the "common carrier" duties conveyed by the typical railroad lessor. For the same reason, his mineral fee interest is subject to no obligation to "resume" service. Congress has never passed an express statutory provision, comparable to Section 77(c)(6) of the Bankruptcy Act, under which an oil and gas lessor can be

[61] *See* Friendly, *Amendment of the Railroad Reorganization Act*, 36 COLUM. L. REV. 27, 48-49 (1936).

obligated to perform any interstate service obligations his lessee may elect to undertake.

Further, while railroad "leases" and trackage agreements which have short terms or are terminable at will are common because they make economic sense, oil and gas leases with short fixed terms or terminable at will are unknown[62] because they make no economic sense. The oil and gas lessee's major investment is in drilling costs, and he counts on recovering that investment by marketing all of the reserves, if any, that he discovers.[63] Thus, in the oil and gas industry, there is no danger that lessees, under short-term leases or leases terminable at will, would attempt to commence interstate sales that the lessors could terminate shortly thereafter.[64]

In view of these fundamental differences, there is little reason to look to railroad abandonment cases involving "leases" for illumination as to the appropriate principles to apply with respect to a producer sale under the Natural Gas Act by a lessee under a fixed-term lease. Such light as the railroad cases do shed supports the decision of the court of appeals.

B. Under The Interstate Commerce Act, Only A Lessor Who Is Performing A Railroad Service When The Lease Was Made Is Subject To ICC Abandonment Jurisdiction When The Lease Expires.

In attempting to draw their ICC abandonment analogy, the Commission et al. rely upon two decisions of this

[62] As previously pointed out, *supra* note 1, all modern oil and gas leases last as long as the lessee maintains production in paying quantities. Even leases with long fixed terms, such as Gulf's Waddell Ranch lease, are extremely rare and outdated.

[63] This is precisely why lessees stopped agreeing even to *long* fixed-term leases by 1928, and insisted on the ordinary lease, which is capable of lasting indefinitely. *See* 3 H. WILLIAMS, OIL & GAS LAW § 601.1 at 2-3 (1975).

[64] As discussed in Part IV, pages 37-45, *infra*, the decision below does not impair the Commission's ample existing authority to protect the interstate market against the commencement of unreliable service by a lessee under a hypothetical lease terminable at will.

Court and two ICC decisions.[65] Each of the cases involved an agreement which was entered into between two operating railroads.[66] Thus, none stand for the proposition that under Section 1(18) the ICC may require a lessor which was not a railroad when the lease was made to undertake railroad service being performed by the lessee upon the termination of the lease.

The two decisions of this Court do not even hold that a lessor which *was* a carrier by railroad with respect to the roadbed in question when the lease was made can be forced under Section 1(18) to resume operations upon termination of the lease. Both *Smith* and *Tex-Mex* involved attempts by one railroad to oust another railroad from its tracks when the latter went into bankruptcy and reorganization proceedings under Section 77. This Court held that, while the bankruptcy court had the power to declare lease forfeiture in *Smith* and contract termination in *Tex-Mex*, since the "nature of the plan of reorganization . . . is entrusted primarily to the Commission," primary jurisdiction lay with the ICC and the courts were premature in declaring forfeiture. 328 U.S. 132-33; *see also* 328 U.S. at 141-42.[67]

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[65] *Smith* v. *Hoboken R.R., W&S.S.C.Co.*, 328 U.S. 123 (1946); *Thompson* v. *Texas Mexican Ry.*, 328 U.S. 134 (1946); *Chicago & Alton R.R.* v. *Toledo, P.&W. Ry.*, 146 ICC 171 (1928); and *Lehigh Valley Railroad Co. Proposed Abandonment of Operation*, 202 ICC 659 (1935).

[66] Only the *Lehigh Valley* case involved a fixed-term lease. *Smith* involved a lease terminable at will. *Tex-Mex* and *Chicago & Alton* involved trackage contracts, which create "only a personal obligation" and not an estate in property. 328 U.S. at 140. In each case the owner of the tracks was an operating railroad when it entered into the agreement, although in *Lehigh Valley* the lessor had ceased to operate railroad properties after entering into the lease.

[67] In *Smith* this Court did note that the ICC had denied the lessor's application for authorization to "resume operations of the railroad" on the grounds that the lessor's original obligations as a carrier by railroad "have never ceased" and, therefore, must be "performed by the lessor on its own behalf." 328 U.S. at 129. This is the closest that this Court has ever come to holding that under Section 1(18) a lessor which *was* a carrier by railroad when the lease was made can be forced to resume its own prior railroad operations when the lease terminates.

The *Chicago & Alton* ICC decision also involved an attempt by one railroad which was party to a trackage agreement to cancel the agreement when the other railroad went into receivership. The ICC decided that it had power under Section 3(4) of the Interstate Commerce Act to require the former to extend its service to replace that previously performed by the latter; no comparable provision exists under the Natural Gas Act.[68]

Only the *Lehigh Valley* ICC decision involved a "lease" which terminated by operation of law. Even in *Lehigh Valley* the "lease" was a device by which the lessor had transferred his own common carrier duties to the lessee. The ICC noted that the lessor had voluntarily dedicated its property to common carrier railroad service in the first place. Relying on this Court's decisions concerning such dedications under common law, the ICC accordingly held that:

> [t]he subsequent lease of its railroad to another company did not change the lessor's relations to the public, nor relieve it from performance of the duties and obligations imposed by its charters or the general laws of the State . . . .

202 ICC at 663.

What the Second Circuit held in *Meyers* v. *Famous Realty, Inc.*, 271 F.2d 811 (2d Cir. 1959), *cert. denied*, 362 U.S. 910 (1960), is equally true here:

> None of the decisions cited held or implied that a noncarrier, by merely leasing its properties to a carrier, becomes a 'carrier by railroad' or incurs any obligation to perform its railroad operations when its lease expires.

271 F.2d at 814.

On the contrary, *Meyers* held, and it is the "settled construction" of Section 1(18), that a lessor may be required

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[68] The ICC did also hold that under Section 1(18) it had power over railroad operations under trackage agreements between two carriers by railroad. 146 ICC at 180-81. This is the *only* proposition for which this Court in *Tex-Mex* cited *Chicago & Alton* with approval. *See* 328 U.S. at 144.

to obtain abandonment authorization "only when the lessor was a 'carrier by railroad'... when the lease was made." *City of New York* v. *United States,* 337 F.Supp. 150, 153 (E.D.N.Y. 1972) (three-judge panel) (Friendly, J.).

The Second Circuit's interpretation of Section 1(18) is also the ICC's interpretation. In *Bush Terminal R.R. Entire Line Abandonment,* 342 ICC 34, 50 (1971), the ICC summarized the holding of *Lehigh Valley* and similar cases as follows:

> When a carrier leases its rail facilities to another, it is under a revived obligation to operate its railroad property on its own behalf upon discontinuance of operations by the lessee, unless the lessor receives an abandonment order from the Commission.

On the other hand, "a non-carrier, by merely leasing its properties, does not become a carrier by railroad . . . ." *Id.*

The Commission attempts to distinguish these cases on the grounds that in *Meyers* and *City of New York* the lessee had already been granted abandonment. This distinction is spurious. The Second Circuit expressly declined to rely on the prior grant of abandonment to the lessee. It stated that:

> We hold that a carrier which leases mere trackage rights to another carrier is under no obligation to carry on that other carrier's operations when its lease expires *or* that other carrier's operations are legally abandoned.

271 F.2d at 814 (emphasis supplied). That is, under Section 1(18) *neither* the expiration of a lease *nor* a grant of abandonment to a lessee carrier by railroad obligates a non-carrier lessor to perform railway service.

Giving up the attempt to distinguish *Meyers,* the Commission accuses Southland Royalty of using it to contend that a successor-in-interest is "not within the Commission's jurisdiction and thus does not need permission to cease interstate sales," a proposition which "would eviscerate the Natural Gas Act" and "would be equally

devastating" if applied to the Interstate Commerce Act. (FPC at 28). Southland Royalty makes no such contention. As demonstrated above, pages 22-26 *supra,* a successor-in-interest unquestionably does need the Commission's permission to cease interstates sales.[69] But Southland Royalty is not a "successor-in-interest" to Gulf. Gulf's lease expired according to its terms. Southland Royalty thereupon came into present enjoyment of the mineral fee estate it had always owned, an estate which Gulf had never owned and could not have dedicated to interstate service. *Meyers* has been the law for eighteen years without "devastating" the Interstate Commerce Act and the Commission offers no factual or legal basis for its claim that an analogous holding in this case would "eviscerate" the Natural Gas Act.

IV. THE DECISION OF THE COURT OF APPEALS DOES NOT IMPAIR THE COMMISSION'S REGULATORY AUTHORITY.

The Commission et al. urge reversal of the court of appeals' decision in order to prevent three types of potential injury to the Commission's jurisdiction allegedly resulting from the decision below. First, they assert that large quantities of gas dedicated to interstate service in this and other fixed-term lease expiration cases will be "released" or "withdrawn" from such service without the Commission's approval. Second, they contend that the decision below will be dispositive of other cases involving premature termination of conventional oil and gas leases and thereby will inevitably result in "withdrawal" of dedicated reserves. Third, they claim that lessors and lessees will be able to draft future leases in novel ways that will "maximize both parties' options to leave the interstate market when this served their mutual advantage." (FPC at 30 n.29). These contentions are without merit.

[69] Thus, if a lessee sells his leasehold interest, or dies and his leasehold interest passes to his heirs, his successors have the same obligations to produce his leasehold gas and sell it in interstate commerce as the lessee himself did. But Gulf did not sell or otherwise transfer its leasehold interest to Southland Royalty, and only Gulf's leasehold interest was dedicated to El Paso.

A. The Court Of Appeals' Decision Does Not "Release" From Interstate Service Any Dedicated Gas.

To assert that the court of appeals' decision will permit large quantities of gas "dedicated" to the interstate market by fixed-term lessees to be "released" or "withdrawn" from the interstate market begs the question. Gulf has already delivered all its fixed-term leasehold gas to El Paso, so none of Gulf's gas could be "withdrawn" from interstate service by anyone. If, as the court below held, Gulf had no power to dedicate Southland Royalty's gas, Southland Royalty's gas is not dedicated to interstate service. If Southland Royalty's gas is not dedicated, it will not be "released" or "withdrawn" from such service when Southland Royalty sells it to Intratex.[70]

B. The Court of Appeals' Decision Does Not Determine The Outcome Of Cases Involving Premature Termination Of Oil And Gas Leases.

The Commission et al. recognize that "fixed-term leases" of the kind involved here are no longer common (FPC at 30), and do not deny that such oil and gas leases had "long been in disuse" by 1928.[71] They contend, however, that "the rationale of the court below" (FPC at 30) would apply in ordinary lease cases "when a lease terminates for any reason." (El Paso at 23). They base this concern primarily on *Pennzoil Producing Co.* v. *FPC*, 553 F.2d 485 (5th Cir. 1977).[72] Analysis of *Pennzoil* demonstrates that this argument is a make-weight.

In *Pennzoil*, two producers-lessees were making interstate sales, at Commission-regulated rates, of gas produced under their ordinary leases. They were faced with lessors' Louisiana state court suits for higher "market value" royalty payments. Under Louisiana law, lease forfeiture is a

[70] As previously noted, *supra* note 22, the Commission et al. grossly exaggerate the amount of gas involved.

[71] *See* note 1, *supra*.

[72] They also point to *Northern Natural Gas Co.* v. *Crawford*, FPC Docket No. C571-6, issued September 29, 1975, *appeal docketed sub nom. Harrison* v. *FPC*, No. 76-4318 (5th Cir. Dec. 19, 1976).

possible though extremely rare remedy for improper royalty payments.[73] The producers petitioned the Commission for relief. They sought two forms of relief, in the alternative: First, an increase in the price they could charge to cover the amount of increased royalty they might have to pay if they lost or settled; or, second, authorization to "abandon" the interstate sale of a fraction of the gas produced so that it could be delivered to the royalty owner in kind. The Commission denied relief. It held that it had no authority to permit the producers to sell their gas at rates above the otherwise applicable ceiling rates, notwithstanding the increased costs of "market value" royalty obligations, and that the "present or future public convenience or necessity" did not require abandonment of the royalty portion of the lessees' dedicated gas.

The Fifth Circuit reversed and remanded. With respect to the rate relief sought by the producers, the Fifth Circuit noted that under the cost-based rate regulation methodology approved by this Court in the *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), the Commission did have the authority to protect the producers' Commission-set just and reasonable rates by allowing higher prices to cover increased costs, including royalty costs. With respect

[73] The Commission says that the leases in *Pennzoil* "contained standard provisions for termination in the event royalties were not paid as required" (FPC at 31). We believe that the leases in *Pennzoil* contained no such provisions, but in any event such provisions are certainly not "standard." On the contrary, "[o]il and gas leases ordinarily do not contain an express provision empowering the lessor or royalty owner to declare a forfeiture thereof for the non-payment of gas well rentals or oil and gas royalties from production." 3A W. SUMMERS, THE LAW OF OIL & GAS § 616, at 516 (1958). Only two Louisiana cases have declared forfeitures for improper royalty payments absent such an express lease provision. Both were decided before the recent liberalization of that state's mineral code, no other state courts have ever declared such a forfeiture absent an express clause, and the commentators are without exception opposed to such forfeitures. *See id; see also* 3 H. WILLIAMS, OIL & GAS LAW § 656.2 (1975). New York's contention that leases commonly provide for forfeiture in the event that the lessee makes a regulated sale (N.Y. at 4) is equally unsupported and equally erroneous. New York is probably confusing leases with intrastate gas sales contracts, where sellers do commonly insist on provisions prohibiting interstate resales of their gas by the purchasers.

to the requested abandonment, the court stated that, under its decision in the present case, if the producers in *Pennzoil* lost the state court litigation they might face termination of their leases and resulting diversion of the entire amount of gas from interstate commerce, which might be worse for the public interest than the relief requested.

The Commission then petitioned for rehearing. The Commission argued that "having decided to remand the rate relief issue . . . for consideration on the merits, it was unnecessary and premature for the court to then consider" the "tangential" lease termination issue which "might not thereafter arise." The Commission reminded the court of appeals that it should not "indulge in any dicta on 'what if,' or hypothetical, propositions which may never occur. We are not allowed the luxury of advisory opinions."[74] The Commission then urged the court to "withdraw the specified portions" of its opinion. In response, the court agreed to "pull from the opinion any indication as to how *Southland* might apply to the facts of this case." (*See* FPC at 5a).[75]

In its petition for rehearing in *Pennzoil*,[76] the Commission also argued at length that the court of appeals' apparent decision in that case of the ordinary lease termination issue was in error. The Commission contended that the termination of the leases involved would not result in diversion of the gas from interstate commerce even if the court of appeals' decision in this case were affirmed. The Commission noted that the leases in *Pennzoil* were ordinary

[74] The Commission was quoting from the Fifth Circuit's decision in *Mitchell Energy Corp.* v. *FPC*, 533 F.2d 258, 261-62 (5th Cir. 1976).

[75] The Commission now chastises the court of appeals for withdrawing only the last two sentences of its opinion in *Pennzoil*. These two sentences were, however, the *only* portions of the court's opinion which the Commission actually quoted as the subject of its petition for rehearing. In any event, the court of appeals' intent was, clearly and expressly, "to pull from the opinion any indication as to how *Southland* might apply to the facts of this case."

[76] Southland Royalty is contemporaneously lodging with the Court copies of this petition for rehearing.

leases, capable of lasting indefinitely. Thus, unlike Gulf, the lessees owned all the gas reserves in question and could and did commit all such reserves to their interstate sale. Therefore, the Commission claimed, even if the lessors secured premature termination through their state court suit, the entire gas supply had been "once dedicated" by the lessees and could not be withdrawn. That is, the Commission has clearly and explicitly told the court of appeals that this case is distinguishable from *Pennzoil*.

Likewise, the Commission told the court of appeals that it was premature to decide in *Pennzoil* what the effect of an early termination of an ordinary lease would be. The court of appeals agreed. The Commission cannot now claim that the court of appeals has decided that issue in *Pennzoil*, and decided it wrongly, and must be reversed in *this* case.[77] This Court simply has "no occasion to decide" the ordinary lease termination question. "Decision of that question must await a case which presents it." *Gainesville Utilities* v. *Florida Power Corp.*, 402 U.S. 515, 529 (1971).[78]

C. The Commission Has Authority To Prevent Lessees From Commencing Interstate Sales And Subsequently Withdrawing Their Dedicated Gas From Interstate Service.

The Commission et al. contend that, even if the court of appeals' decision is correct on the facts of this case, this court must reverse in order to prevent future lessors and lessees from entering into novel types of leases which would permit them to "freely move from the interstate market to the intrastate market with the Commission helpless to consider the public interest." (Calif. at 30). Unless the court of appeals' decision is reversed or

[77] The Commission may seek certiorari from the court of appeals' decision in *Pennzoil*. To our knowledge, it has not yet done so.

[78] The issues in the *Harrison* appeal, note 72 *supra*, are, of course, even more "tangential" and "premature" here. The only decision that we have so far is the decision of the Commission, and the Commission has vigorously defended its decision in the court of appeals.

limited,[79] they contend, such novel leases will become "prevalent" and "the purposes of the Natural Gas Act will be undermined." (FPC at 33).

The nature of this argument should be carefully considered. The Commission et al. request judicial creation of Commission jurisdiction, not conferred by Congress, compelling an involuntary interstate sale by Southland Royalty. They base their request on speculation, completely without record support, about what some other producers might do in the future on some other facts. Such an argument must be rejected for four reasons.

First, no danger is presented on the facts of this case.[80] Gulf's lease was entered into long before the passage of the Natural Gas Act, and almost thirty years before the Act was ever held to apply to producer sales. Gulf itself commenced its sale of its leasehold gas before the Act was held to apply to such a sale. Gulf committed to its sale all of the Waddell Ranch lease casinghead gas that Gulf owned, with no attempt to reserve an option to sell any portion of its casinghead gas in the intrastate market. Southland Royalty, on the other hand, has never sold any gas from the Waddell Ranch in interstate commerce (except involuntarily under compulsion of the Commission's orders

[79] In its *amicus* brief, New York recognizes that the decision of the court of appeals was rendered in the context of the expiration of a fixed-term lease but states that it is "afraid" the rationale of such decision "could not be so limited." *See* N.Y. at 3. Southland Royalty suggests that the court of appeals' decision does not constitute any authority for a case in which a lessee voluntarily terminates his lease, before its natural expiration, knowing that commercially producible reserves exist and intending to permit them to be sold by the lessor in intrastate commerce. Nor does the court of appeals' decision intrinsically authorize a lessor to prematurely terminate a lease when commercially producible reserves are known to exist, in an effort to take away the lessee's right to sell his leasehold gas in interstate commerce. If the rationale of the court of appeals' decision does appear to extend so far, this Court clearly can and should limit it. No such limitation, however, requires reversal.

[80] The most that the Commission contends is that the danger "of manipulation of Commission jurisdiction by restructuring leases" is "suggested by this case." (FPC at 24). The Commission offers no support for this statement.

in the present case), and thus certainly has made no attempt to commence an interstate sale and then later "reassess" whether it desired to serve the interstate market.

Second, it is for Congress to decide when Commission jurisdiction is necessary to achieve a purpose or eliminate an evil. It was argued in *Chemehuevi Tribe of Indians* v. *FPC,* 420 U.S. 395 (1975), that unless particular conduct was held by the courts to be subject "to the licensing jurisdiction of the Commission," private parties would succeed in achieving "the very evil" that the Act "was designed to eliminate." This Court unanimously rejected the argument. "Whatever the merits of complainants' argument as a matter of policy, it is properly addressed to Congress, not to the courts." 420 U.S. at 423.[81]

Third, the danger hypothesized is simply implausible. The lessee is the party who explores for natural gas. The great bulk of his investment risk is in drilling costs. He has no incentive to enter into short fixed-term leases or leases terminable at will because such leases would take away his incentive to make the investment: his opportunity to market all of the gas he finds, and thus over the long run, averaging discoveries and dry holes, to return a profit. This was precisely the reason why, in the 1920's, producers stopped entering into even long fixed-term leases, such as Gulf's lease in the present case, and instead went to ordi-

[81] Each House of Congress has already passed legislation which would foreclose any serious possibility of future leases of the type feared by the Commission et al. *See* H.R. 8444, 95th Cong. 1st Sess. (1977), passed by the House of Representatives on August 5, 1977, 123 Cong. Rec. H8827 (daily ed. Aug. 5, 1977) and S. 2104, 95th Cong., 1st Sess. (1977), passed by the Senate on October 4, 1977, 123 Cong. Rec. S16323 (daily ed. Oct. 4, 1977). As to future sales of gas, either of these bills, if it became law, would eliminate the disparity between interstate and intrastate prices which allegedly creates the incentive for lessees to enter into short-term leases, commence interstate service, and then "reassess" serving the interstate market. In this connection, the Commission states that H.R. 8444 "would not affect the large bulk of gas that is currently being produced," FPC at 7 n.9, but this is simply incorrect. H.R. 8444 would impose price ceilings on all categories of producer gas sales – both interstate sales and intrastate sales, and both "old" gas and "new" gas.

nary leases which last as long as the lessee maintains any production in paying quantities.[82]

Fourth and finally, the Commission is by no means "helpless" to prevent a lessee from commencing interstate service while reserving for himself or his lessor the ability to withdraw his leasehold gas from such service at the option of either. The Commission can simply refuse to authorize the proposed sale. Alternatively, the Commission can condition the certificate it issues on the lessee-applicant obtaining a longer term leasehold interest for commitment to the sale.

The Commission's power to protect the interstate market in such situations is illustrated by its recent decision in *Transco Exploration Co.*, Docket No. CI77-306, issued June 27, 1977.[83] There the Commission refused Transco Exploration's request for a certificate with pregranted abandonment to make an interstate sale of twenty-five percent of its leasehold interest in a gas field. Transco Exploration requested pregranted abandonment effective on the date that the producer which had assigned the lease to Transco Exploration exercised its right to require Transco Exploration to reassign to the producer a twenty-five percent share of the lease. The Commission held that to grant the request for pregranted abandonment would undermine its orders which were sustained by the Tenth Circuit in *Phillips, supra,* and would "encourage other potential working interest owners to include a similar prohibition in future assignments." *Id.* at 3.[84]

[82] *See* 3 H. WILLIAMS, OIL & GAS LAW § 601.1 at 2-3 (1975).

[83] The case is merely illustrative, because it involved a farmout or contract between the assignor of a lease and his assignee, rather than a lease provision.

[84] On September 19, 1977, the Commission granted rehearing of this order and issued Transco Exploration the limited-term certificate with pregranted abandonment which it originally sought. The Commission stated again that it intended to continue its "general policy" of not issuing such certificates where they would encourage assignors to make "long-term dedication of gas in interstate market impermissible" under the terms of their lease assignments. *Id.* at 2. The Commission made an exception for Transco Exploration because of special circumstances but stated that "in order to discourage this type of arrangement" it would "refuse to apply" any such exception even to "pipeline affiliates with regard to farmout or similar arrangements executed on or after the date of issuance of this order." *Id.* at 3-4.

The Commission should certainly protect the interstate market against any producer who tries to make an unreliable sale of natural gas. As *Transco Exploration* illustrates, the Commission has ample power under Section 7(e)[85] to protect the interstate market against any such unreliable seller. However, protection of the interstate market against such hypothetical sales does not require a holding in this case that by making an interstate sale of all of the gas attributable to its long fixed-term lease, Gulf also dedicated gas in which it never had any ownership or other interest — the gas owned by Southland Royalty and produced by it after the expiration of Gulf's lease.

[85] Under Section 7(e) the Commission has the power to reject or condition the certificate of public convenience and necessity which a producer must obtain before initiating an interstate sale of its natural gas.

CONCLUSION

Gulf's interstate sale of Gulf's leasehold gas did not dedicate Southland Royalty's gas to interstate service. Certainly, Gulf had no power under property law to encumber Southland Royalty's gas with an interstate service dedication. Likewise, Gulf had no power under the Natural Gas Act to dedicate Southland Royalty's gas to Gulf's interstate service. Since Southland Royalty's gas has not been dedicated to interstate service, Southland Royalty may sell its gas to the purchaser of its choice without obtaining Commission authorization to abandon interstate service. For these reasons, the decision of the court of appeals should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1114

CALIFORNIA, *et al.*

Petitioners

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

No. 76-1133

EL PASO NATURAL GAS COMPANY

Petitioner

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

No. 76-1587

FEDERAL POWER COMMISSION

Petitioner

v.

SOUTHLAND ROYALTY COMPANY, *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT CRANE COUNTY DEVELOPMENT COMPANY

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT CRANE COUNTY DEVELOPMENT COMPANY

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 543 F.2d 1134 (Pet. App. 1a-11a)[1] and the relevant opinions

[1] This brief will follow the Federal Power Commission's system of referring to the appendix in the petition for certiorari as

and orders of the Federal Power Commission (Nos. 737 and 737-A) are reported at App. 598 and App. 708.

JURISDICTION

The judgment of the court of appeals was entered on December 13, 1976 (Pet. App. 12a-13a), and certiorari granted on June 27, 1977, in *California, et al.* v. *Southland Royalty Company, et al.*, No. 76-1114, *El Paso Natural Gas Company* v. *Southland Royalty Company, et al.*, No. 76-1133, and *Federal Power Commission* v. *Southland Royalty Company, et al.*, No. 76-1587. The cases have been consolidated (App. 746). Jurisdiction rests on 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act of 1938, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the reversionary interest existing under a fifty-year fixed-term oil and gas lease is rendered subject to Federal jurisdiction under the Natural Gas Act when the lessee makes an interstate sale of its interest in production.

STATEMENT

This case raises the question of FPC jurisdiction over two oil and gas properties in West Texas, the Waddell Lease in Crane County (App. 135) and the Goldsmith Lease in Ector County (App. 293). Both were subject to leases executed in 1925 that provided for a reversion of the property to the landowner after fifty years. The lessee, Gulf Oil Corporation, discovered oil and gas on both leases pursuant to its leasehold rights.

"Pet. App." and the appendix in this court as "App." Although the Federal Power Commission was succeeded by the Federal Energy Regulatory Commission on October 1, 1977, this brief continues to refer to the Federal Power Commission to avoid confusion.

1. Gulf's certificated interstate sales

In 1951, Gulf began sales of casinghead gas to El Paso Natural Gas Company from the Waddell Lease (App. 40). Gulf's sales were carried on in interstate commerce for resale to distributing companies on the El Paso pipeline system, which extends from Texas through New Mexico, Utah, Colorado, Arizona, and California (App. 119). As Seller, Gulf agreed to a customary "dedication" to the sales contract covering "all of Seller's surplus residue gas as herein defined" (App. 43). Gulf entered another contract with El Paso covering Waddell Lease sales in 1972 that included a "commitment" of "all volumes . . . from" those properties owned by Gulf Oil Corporation set forth on an exhibit to the sales contract (App. 87, 90-91). The 1972 contract adopted the 1951 contract by reference (App. 88). Although the record does not contain the exact terms of sales contracts to El Paso covering the Goldsmith Lease, the Federal Power Commission's brief states that "there are no material differences" between the leases (Br. 5 n.6).

Following this court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), Gulf applied to the FPC for a certificate of public convenience and necessity "with respect to the sale of natural gas" in interstate commerce to cover the Crane County sale (App. 2). The Commission held a public hearing on May 21, 1956, and promulgated its Findings and Order Issuing Certificates of Public Convenience and Necessity on May 28, 1956, noting that the applicants were "to render services as hereinafter described" (App. 26, 35). The Commission found that Gulf was "engaged in the sale of natural gas in interstate commerce for resale," and was therefore a "natural gas company within the meaning of the Natural Gas Act" and issued it a certificate (App. 36-37). Commissioner Digby concurred in the order, but stated that the Commission lacked power over

"the producing properties and gathering facilities of a natural-gas company", citing *inter alia FPC* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498, 505.

2. Proceedings in the Texas courts

In the early 1970's, Gulf filed suit in the Texas courts to forestall expiration of the fifty-year term of the Waddell lease. The trial court denied Gulf's demand for additional lease time and held that the Waddell lease terminated by operation of law on July 14, 1975, exactly fifty years after its execution. The Court of Civil Appeals and the Supreme Court of Texas affirmed. *Gulf Oil Corporation* v. *Southland Royalty Company*, 496 S.W.2d 547, 548 (Tex. 1973) (App. 166, 168). The owners of the reversionary interest began seeking a market for gas sales attributable to their interest (App. 181-191).

On January 17, 1975, El Paso Natural Gas Company filed a Petition for a Declaratory Order by the Federal Power Commission to continue sales of the Waddell gas to the company after reversion of the property to the landowners (App. 117). On April 19, 1975, Texaco Inc. filed its petition covering the Goldsmith lease. On July 11, 1975, three days before reversion of the estate, the Commission issued Opinion 737 ordering both Gulf and the reversioners to continue deliveries to El Paso (App. 599). The Commission stated:

> In our opinion the various mineral reversioners may not sell gas from the two leaseholds in intrastate commerce without prior permission and approval of the Commission. Although we have discovered no case directly in point, we are of the opinion that the cases and the purpose of the Natural Gas Act inevitably lead to this view.

(App. 605). Motions for rehearing were filed and on September 3, 1975, the Commission issued Opinion 737-A, its order

on rehearing. The Commission reaffirmed the jurisdictional conclusion of Opinion 737 by stating:

> Upon the commencement of interstate sales under FPC certification, the sales became imbued with the public interest.

(App. 713).

3. Decision of the Court of Appeals

On petitions for review of the Commission's orders filed by the landowners,[2] the Fifth Circuit Court of Appeals reversed the Commission on December 13, 1976. 543 F.2d 1134. The court held that the FPC had no power over the gas owned by the reversioners because a lessee can only dedicate what he owns:

> The estates in the single tract are as separate as though they subsisted in separate parcels of land. Though it is unquestioned that Gulf's dedication covered all of the surplus residue gas it produced during its lease term, there likewise can be no question that, under well established concepts of property law, Gulf could not legally deal in or dedicate that portion of the gas which Southland might own upon termination of Gulf's estate.

543 F.2d at 1136-37. These petitions followed.

SUMMARY OF ARGUMENT

These cases arise from an attempt by the Federal Power Commission to assert abandonment jurisdiction over oil-and-gas leases expiring of their own terms. The landowners' conveyance, authoritatively interpreted under Texas law, lasted only fifty years, and more than half the term of the grant had expired when Gulf commenced sales of

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[2] Crane County Development Company moved to intervene in the case in the Court of Appeals "with full rights as a party." Crane County's motion was granted without opposition on March 8, 1976.

natural gas for resale in interstate commerce from the Waddell Ranch and thus rendered itself subject to FPC jurisdiction under the Natural Gas Act. Seeking to prolong gas deliveries from the property, El Paso Natural Gas Company persuaded the Federal Power Commission to direct that sales to El Paso had to continue even though the state courts had ousted the jurisdictional seller.

Such a result would run directly counter to settled interpretations by this Court of the Natural Gas Act and its sister statute, the Federal Power Act, in cases that rejected FPC jurisdiction over essentially local transactions. *FPC* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498; *Connecticut Light & Power Company* v. *FPC*, 324 U.S. 515. The Commission chose to ignore these clear precedents and act on its own perception of the public interest. In doing so, it overreached its jurisdiction under the Natural Gas Act and was properly reversed by the Court of Appeals.

Constructions of the power of the Interstate Commerce Commission have no relevance to this problem, moreover, because the framers of the Natural Gas Act rejected that Act as a model.

ARGUMENT

PRIOR DECISIONS OF THIS COURT FORECLOSE THE FPC FROM ASSERTING JURISDICTION OVER THESE PROPERTIES UNDER THE NATURAL GAS ACT.

A. The Natural Gas Act does not reach local property interests such as these but only certain interstate sales and transportations of natural gas.

The Federal Power Commission, candidly admitting that it can find no clear legal precedent for its action, has attempted to exert its abandonment authority over property interests that are beyond FPC jurisdiction under the Natural Gas Act. The FPC's action is understandable: it seeks to capture every possible molecule of natural gas for the interstate market, which has been faced with growing shortages perhaps brought on by regulatory failures. *See FPC* v. *Texaco Inc.*, 417 U.S. 380, 400 and n.9. But the Court of Appeals was correct in reversing the Commission, because the FPC's orders here amounted to "an expansion of the Natural Gas Act to activities clearly not within its terms." *Mobil Oil Corp.* v. *FPC*, 463 F.2d 256 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 976 (1972).

In these cases, the Commission exerted jurisdiction over the terms of ordinary expiring leases, granted by the landowners to a producer that rendered itself subject to the Natural Gas Act with interstate sales more than two decades after the conveyance. Thus the lease was far removed from any sale of gas in interstate commerce both in time and dispositive provisions. The FPC sought to augment the gas reserves of El Paso Natural Gas Company, but in directing the reversionary owners to produce their gas for the benefit of El Paso, the Commission arrived at an unprecedented result, forcing the reversionary owners into an assumption of Gulf's sale. Even though the reversion was prior in time and superior in law to Gulf's sales commitments, the Commission decided that Gulf's sales had resulted in a "dedication of gas reserves" to the interstate market. This is only a conclusory justification for the FPC's exercise of power.

In this Court, the Commission has dropped its argument that the reversionary interest was somehow "dedicated" to interstate commerce. There is clearly no dedication to be found anywhere in this record, as the Court of Appeals held. The FPC and the other petitioners have fallen back

instead on a novel theory amounting to the extension of Federal jurisdiction in rem over these local property interests. Thus, California argues that "[t]he Natural Gas Act imposes a regulatory requirement on the subject natual gas above local law and lease agreements" leading to a statutory "service requirement . . . which attache[s] to the gas" (Br. 8, 9). California is wrong.

Even if Congress has power to regulate these purely local interests in land, that power was not granted to the Federal Power Commission by the Natural Gas Act. The statutory service requirement urged by petitioners was rejected by this Court in *FPC* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498 (1949), which held that ordinary lease transactions were among the matters left to the states by the Natural Gas Act.

In that case, as in this one, the Commission sought to extend its jurisdiction over gas reserves never dedicated to interstate commerce. The pipeline had conveyed leases in Kansas to an intrastate subsidiary. Although Panhandle Eastern had never made deliveries of gas from the leases and thus was neither selling nor transporting the gas in interstate commerce, the Commission sought to block the transfer. 337 U.S. at 501.

This Court held that the transaction fell within the jurisdictional exemptions of Section 1(b) of the Natural Gas Act, 15 U.S.C. 717(b), and was thus beyond FPC power. The Court construed the Natural Gas Act as not extending "federal regulation of the entire natural gas field to the limit of constitutional power," but as applying only to sales of natural gas in interstate commerce for resale, transportation of natural gas, and companies "engaged in" either a transportation or a sale, quoting *Panhandle Eastern Pipeline Company* v. *Public Service Commission of Indiana*,

332 U.S. 507, 516 (1947). The Court decided that Congress had purposely "left the transfer of gas leases to state regulation and outside the scope of the Commission's regulatory powers." 337 U.S. at 502.

The Panhandle Eastern case is a complete answer to the argument that the Natural Gas Act attaches to real estate in the form of oil and gas in place. Nor can there be any analytical difference between the transfer of a pipeline's undeveloped leases to an intrastate subsidiary and the transfer of a landowner's rights for a term of years. If anything, the landowner's distance from interstate commerce and thus FPC jurisdiction is greater. *Mobil Oil Corporation* v. *FPC*, 463 F.2d at 262-63.

Nor is *FPC* v. *Panhandle Eastern Pipe Line Company*, *supra*, an isolated precedent. In a series of natural-gas cases, cited by Commissioner Digby in his concurrence to the Gulf certificate order in this case (App. 39), this Court has held that the properties of a natural gas company such as Gulf were placed beyond FPC jurisdiction by Congress. Thus "the 'production or gathering' exemption applies to the physical activities, facilities, and properties used in the production and gathering of natural gas." *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 678, citing *Colorado Interstate Gas Co.* v. *FPC*, 324 U.S. 581, 598. Under the sister statute administered by the Commission, the Federal Power Act, this Court has held that Congress "meant what it said" when it limited the jurisdiction of the Commission to sales and transportations in interstate commerce and excluded local facilities. *Connecticut Light & Power Company* v. *FPC*, 324 U.S. 515, 530 (1945).

In all these cases, this Court has observed that Congress did not intend to bring under the Federal Power or Natural Gas Acts any transaction left to state jurisdiction under

Missouri v. *Kansas Gas Company*, 265 U.S. 298 (1924), and *Public Utilities Commission* v. *Attleboro Steam & Electric Company*, 273 U.S. 83 (1927). These cases held that sales and deliveries "essentially national in character" were beyond the reach of state regulation. *See Missouri* v. *Kansas Gas Co.*, 265 U.S. at 308. But activities essentially local could be regulated by the states. *Id.* at 309. It is difficult to imagine any transaction more essentially local than the conveyance of real property; and indeed this Court has observed that regulation of real property rights in oil and gas is "essentially local" in character. *Ohio Oil Company* v. *Indiana*, 177 U.S. 190, 211-212 (1900). *See FPC* v. *Southern California Edison Co.*, 376 U.S. 205, 211-14 (1964); *Mobil Oil Corp.* v. *FPC*, 463 F.2d at 262-63; *Duke Power Co.* v. *FPC*, 401 F.2d 930, 938-40 (D.C. Cir. 1968).

This "bright line easily ascertained" simply forecloses the argument that the Natural Gas Act gives the Commission the power to compel property owners to carry on a "sale" or to render a "service" they never agreed to. *FPC* v. *Southern California Edison Company*, 376 U.S. at 215. "The FPC is limited by the provision establishing its jurisdiction, and we do not find in that provision, rooted as it is in a sale in interstate commerce, any basis for reaching out to cover the landowner's lease . . . ." *Mobil Oil Corp.* v. *FPC, supra*, 463 F.2d at 263. Petitioners rely heavily on dicta about "service" from other cases to support their claim that this Texas property is now jurisdictional in itself. Yet every one of these cases involved a natural gas company making a sale of natural gas in interstate commerce for resale clearly subject to FPC jurisdiction. "[T]his Court does not decide important questions of law by cursory dicta inserted in unrelated cases." *Permian Basin Area Rate Cases*, 390 U.S. 747, 775 (1968).

Nor does the *Rayne Field* case broaden the Commission's jurisdiction to include these property interests. That jurisdictional holding was also "rooted . . . in a sale in interstate commerce" of natural gas for resale. *Mobil Oil Corporation* v. *FPC*, 463 F.2d at 263. There producers like Gulf in this case withdrew from sales contracts after an adverse decision and sold gas in place under "lease-sale agreements," with payments geared to production. All minerals were reserved to the sellers except natural gas, which was sold to the pipeline. *United Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392, 395-96 (1965). This Court correctly discerned that whatever the form of the transaction, the substance of it was a sale for resale in interstate commerce. The Court will find no such interstate sale of natural gas in the conveyance in 1925 in this case from the landowners to Gulf. The Waddells did not even receive a royalty based on price, but only ⅛ of 4 cents for each Mcf of casinghead gas produced (App. 137).

Thus by the weight of authority these "conventional" leases are outside the scope of FPC jurisdiction under the Natural Gas Act. Since Gulf obviously lacked power to dedicate the landowner's reversionary interest to interstate commerce, the Court of Appeals' decision is correct and should be affirmed.

B. The Interstate Commerce Act offers no aid in the construction of the Natural Gas Act.

The Commission urges the Court to construe the abandonment provision of the Natural Gas Act the way it claims the Interstate Commerce Act has been construed (Br. 21-29; see El Paso Br. 17-21; AGD Amicus Br. 6-7). But Section 7(b) has already been construed to the contrary in *FPC* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. at 508-09.

And even if the question were open, the legislative history denies the Commission any power over lessors similar to that claimed on brief for the Interstate Commerce Commission. This Court quoted Senator Connally of Texas in an exchange in the Senate debates on the Natural Gas Act with Chairman Wheeler of the Interstate Commerce Committee:

> "Mr. CONNALLY. Is it not also true, even though the utility commissioners advocate it, that whenever a Federal agency takes over an activity such as this the State authorities begin to shift or lose their responsibility? If we turn this over to the Interstate Commerce Commission, essentially what they do will be reflected all over the country, because the interstate rates will be superimposed on the State commissions and they must necessarily be governed by them. Did not that happen to the railroads?
>
> "Mr. WHEELER. There is no doubt about that, but this is an entirely different situation.
>
> "Mr. CONNALLY. Yes; one involves the railroads and the other involves gas.
>
> "Mr. WHEELER. No. There is no attempt and can be no attempt under the provisions of the bill to regulate anything in the field except where it is not regulated at the present time. It applies only as to interstate commerce and only to the wholesale price of gas." 81 Cong. Rec. 9313.
>
> "Mr. AUSTIN. Then, it would leave to the future the right to meet any effort on the part of the central government to acquire the natural resources of the State of Montana, or the State of Vermont, or any other State?
>
> "Mr. WHEELER. Oh, yes. It does not touch it in any way, shape, or form, except to require the furnishing of information.

> "Mr. AUSTIN. I have great fear of these occult methods of acquiring the natural resources of our several States." 81 Cong. Rec. 9314.

Quoted in FPC v. *Panhandle Eastern Pipe Line Company,* 337 U.S. at 511-12 n.15. Based on this case, this Court has contrasted the expansive powers of the I.C.C. to regulate exempt operations with the "specific grounding" of limited FPC jurisdiction under the Natural Gas Act. *American Trucking Associations* v. *United States,* 344 U.S. 298, 313 (1953). It is plain that the Natural Gas Act cannot be construed by reference to any powers of the Interstate Commerce Commission.

Conclusion

The Natural Gas Act provides clearly that its provisions "shall not apply" to activities under State control before the passage of the statute. These activities include local property interests and their transfer. As Mr. Justice Jackson stated in *Connecticut Power & Light Co.* v. *FPC*, 324 U.S. at 528-529,

> It is hard for us to believe that Congress meant us to read "shall have jurisdiction" where it had carefully written "but shall not have jurisdiction." . . . [I]t is the provision which loomed importantly in the mind and speech of its sponsors, perhaps was necessary to get the bill passed, and is one which the Commission must observe and the courts must enforce.

Limits on the jurisdiction of the FPC may cut against the interests of El Paso Natural Gas Company and the State of California. But this Court has consistently declined to overturn such congressional assumptions embedded in the framework of the Act. *FPC* v. *Texaco Inc.*, 417 U.S. 380, 400 (1974). This Court should affirm the decision of the Court of Appeals.

Respectfully submitted,

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October, 1977

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 1977, three copies of the foregoing Brief for Respondent were mailed, postage prepaid, to counsel for all parties of record.

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Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1977

No. 76-1114

THE PEOPLE OF THE STATE OF CALIFORNIA and the PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, *Petitioners*,

vs.

SOUTHLAND ROYALTY COMPANY, et al., TEXACO INC., EXXON CORPORATION and MOBIL OIL CORPORATION, *Respondents*.

No. 76-1133

EL PASO NATURAL GAS COMPANY, *Petitioner*,

vs.

SOUTHLAND ROYALTY COMPANY, et al., TEXACO INC., EXXON CORPORATION and MOBIL OIL CORPORATION, *Respondents*.

No. 76-1587

FEDERAL POWER COMMISSION, *Petitioner*,

vs.

SOUTHLAND ROYALTY COMPANY, et al., *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF OF PETITIONERS THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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ARGUMENT

1. Amicus Curiae, the State of Texas (Texas), in its recitation of the facts of the instant proceeding has indicated that the Federal Power Commission (Commission)[1] "ordered Southland Royalty to sell its gas to El Paso Natural Gas Company (El Paso) for resale to 'low priority customers' in California". (Brief of Texas, p. 2.) Texas further indicates by footnote that this low priority use is as fuel to burn under boilers. This is a use allegedly being phased out in Texas. The reference to the use of gas in California is supposedly obtained from California's Petition for Writ of Certiorari. (Brief of Texas, p. 2, ft. 1.)

This statement is erroneous and misleading to the Court. The natural gas currently being sold in interstate commerce by Gulf Oil Corporation (Gulf) to El Paso under the two leases in dispute is being distributed throughout the El Paso system. El Paso sells natural gas to distributors in Texas, Arizona, New Mexico, Nevada and California. The sale of this gas is subject to the jurisdiction of the Commission.

Texas has taken the reference from California's Petition out of context. In its Petition, California stated that a steadily declining supply of gas to California has caused the curtailment of lower priority customers in California. What is meant by this state-

[1]The Department of Energy Organization Act, Public Law No. 95-91, 91 Stat. 565 (1977) was enacted on August 4, 1977. This Act changed the name of the Federal Power Commission to the Federal Energy Regulatory Commission. This change does not have a substantive effect on the instant case.

ment is that under current supply scenarios California distributors can only be sure of serving the highest priority human needs customers on a noninterruptible basis. Each withdrawal of a large supply of gas from the interstate market becomes more and more unacceptable in terms of endangering high priority customers. California would have no difficulty in supplying the Court with data as to its citizens' needs for gas and its declining supply picture. Certainly the definition of "low priority customers" as used by California includes the same class of industrial customers that Texas indicates will be served by Intratex Gas Company. (Brief of Texas, p. 2.)

The important fact however, as stated above, is that the subject gas is under the jurisdiction of the Commission. Because there is a shortage of gas not only in California but throughout the El Paso interstate system, the Commission has approved a natural gas curtailment plan consisting of five levels of customer priorities that ensures equitable distribution to the entire system regardless of the states involved.[2] That plan provides for curtailment of gas beginning with the lowest priority customers. While Texas alleges that it is phasing out the use of natural gas under boilers in Texas, it is far from inconceivable that low

[2]Federal Power Commission Opinion No. 697, Opinion and Order Prescribing Curtailment Plan and Complying with Court Remand of Interim Plan, issued June 19, 1974 in *El Paso Natural Gas Company*, Docket No. RP72-6 reported at 51 FPC 2053 and Opinion No. 697-A Opinion and Order Clarifying and Modifying Prior Opinion issued December 19, 1974 in *El Paso Natural Gas Company*, Docket No. RP72-6 reported at 52 FPC 1876.

priority industrial customers in Texas, as defined by the Commission, may have their entire needs served due to an abundant supply of intrastate gas. This would be so even though high priority customers served by the interstate gas system face the danger of curtailment.

The Natural Gas Act passed in 1938 was created to fill the gaps in regulation that the individual states could not reach. At that time, the primary aim of the Natural Gas Act was to protect the consumer from the economic stranglehold of interstate pipeline companies.[3] But in recent times of severe shortages the establishment of curtailment plans to ensure that all customers of a pipeline system are treated equitably has been recognized as a legitimate responsibility of the Commission.[4]

California is not suggesting here that the interstate supply problem is an overriding policy issue that must prevail over other issues in the instant decision. What is suggested is that the Texas representation of the Commission and California as instruments used to increase, to a point of luxury, the supply of gas to California consumers at the expense of the Texas economy is wholly unfounded. The Commission, since the passage of the Natural Gas Act, has carried out its responsibilities to see that all interstate consumers

[3] *FPC v. Hope Natural Gas Company*, 320 U.S. 591 (1944).

[4] *FPC v. Louisiana Power and Light Company*, 406 U.S. 621 (1972), *American Smelting and Refining Co. v. FPC*, 494 F.2d 925 (D.C. Cir. 1974).

are treated equitably without endangering the economy of any producing state. If there is any public policy that can be derived from the issues raised by Texas it is that the weakening of the abandonment authorization requirement of the Natural Gas Act cannot be treated lightly when there are shortages in the interstate market and 40% of the natural gas production in the United States is centered in one state.

2. In their briefs, Amici Curiae Texas and the State of Louisiana (Louisiana) argue that approval of the Commission's position in the instant case will throw a cloud over the entire field of oil and gas leases thereby disrupting vital exploration and drilling programs and putting people out of work. (Brief of Texas, pp. 6-16; Brief of Louisiana, p. 4.)

This is a parade of horrors that simply does not exist. Texas goes to great lengths to cite statistics on how many acres of land have been leased for gas exploration and production and how many times each acre has been leased in the past. Louisiana presents a hypothetical situation in which one person acquires a lease of certain property for production purposes, obtains a certificate to sell gas for resale in interstate commerce, then ceases production thereby causing his lease to be terminated. Louisiana then argues that the next person to lease the property for exploration and possible production will never know if his gas has already been dedicated to interstate commerce. Neither brief explains how the case now before the Court can generate the problems envisioned.

Section 7(b) of the Natural Gas Act, the abandonment authorization provision, was enacted as part of the original 1938 Act. It is not a new provision. California is unaware of any general exemption from the abandonment provision that has ever been granted by the Commission. Nor has Texas or Louisiana suggested that there has been a wholesale violation of Section 7(b) in the past. This means that any sale or transportation of natural gas in interstate commerce has required a certificate of public convenience and necessity from the Commission. Any abandonment of such sale or transportation, for whatever reason, has required abandonment authorization from the Commission. The scenario presented by Louisiana exemplifies the improbability of the dangers presented by Amici Curiae. The producer in this hypothetical case would not seek and could not receive a certificate for the sale of gas for resale in interstate commerce unless he had a sufficient amount of gas to sell so that it was economically feasible and in the public interest to sell such gas in interstate commerce. A producer in such a position would hardly abandon production (unless it was in his economic interest to do so through a new lease or a subsequent sale in intrastate commerce). If the producer did cease production, however, notwithstanding the case now before the Court, that producer would have to obtain abandoment authorization from the Commission. Therefore, a new exploration effort, especially one involving a new source of gas, would not be subject to the previous dedication.

It is inconceivable that, as Texas and Louisiana suggest, hundreds or thousands of leased parcels of property will suddenly be charged with a duty to serve the interstate market after this case is decided because a previous lessee violated Section 7(b) of the Natural Gas Act. In actuality, Texas and Louisiana have attempted to reverse the effect of the instant case on the historical operation of the Natural Gas Act. That Act has always required abandonment authorization. If the decision of the Fifth Circuit Court of Appeals is upheld a newly created exemption from the Natural Gas Act abandonment provision will come into being. Certainly the case before the Court does not create the situation Texas and Louisiana fear. Here a new owner is attempting to sell the gas now being sold in interstate commerce to an intrastate buyer without abandonment authorization. The dedication of the gas in question is known to the world. Southland Royalty further argues that enforcement of the Natural Gas Act will not be affected by this case because fixed term leases are so rare. (Brief of Southland Royalty, p. 38.) This "rarity" also argues against the magnitude of the problems envisioned. If Texas and Louisiana are suggesting that violations of Section 7(b) must go undisturbed because of the ramifications of enforcing the statute, California must strongly disagree. Congress included Section 7(b) in the Natural Gas Act as part of a comprehensive regulatory scheme and it must be enforced.

3. Southland Royalty and Texas argue that the subject leases are so rare and impractical that up-

holding the Fifth Circuit Court of Appeals decision will not, from a policy standpoint, encumber the enforcement of the Natural Gas Act. (Brief of Southland Royalty, pp. 38, 43; Brief of Texas, pp. 17, 18.)

Whether the transaction before the Court is rare or common it merits enforcement under the Natural Gas Act. More importantly, both Southland Royalty and Texas, at the same time that they denigrate the Commission's concern for the Natural Gas Act, raise examples of lease arrangements that could release gas from sale in interstate commerce without Section 7(b) abandonment authorization and then attempt to distinguish these transactions. (Brief of Southland Royalty, p. 38; Brief of Texas, pp. 12, 13.) Southland Royalty argues that the case of *Pennzoil Producing Co. v. FPC,* 553 F.2d 485 (5th Cir. 1977), is clearly distinguishable from the instant case. The *Pennzoil* case involved the issue, initially, of whether a lease could be terminated and the gas produced under that lease withdrawn from sale in interstate commerce if the lease provision involving royalty payments was violated. Texas takes the unique position of citing such transactions;[8] referring to the Commission's position that the Section 7(b) abandonment requirement be enforced as a "covenant"; and then arguing that

[8] *Northern Natural Gas Co. v. Crawford,* FPC Docket No. CS71-6, issued September 29, 1975, appeal docketed *sub nom. Harrison v. FPC,* No. 76-4318 (5th Cir., Dec. 19, 1976), involving a producer owning a leasehold interest in six sections of land who released his interest in four of those six sections after beginning sales in interstate commerce from the other two sections; *Wessely Energy Corp. v. Arkansas-Louisiana Gas Co. and the FPC,* No. CIV-77-0159-B (W. D. Okla.), issued July 29, 1977.

this "covenant" will cause significant problems. The transactions raised by Respondent and Amici Curiae, all on appeal to higher courts, are the type of transactions that support the Commission's argument that the Fifth Circuit Court of Appeals' decision does in fact create a real danger to Section 7(b) of the Natural Gas Act.

CONCLUSION

For the reasons stated above, California believes that the policy arguments and fears of alleged harm raised in the briefs of Respondent and Amici Curiae as well as their attempts to discredit the Commission's concerns for the Natural Gas Act are without merit and should not be given weight in the instant case.

Respectfully submitted,

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Dated: December 2, 1977.

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IN THE

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OCTOBER TERM, 1977

Nos. 76—1114, 76—1139 and 76—1587

CALIFORNIA, *ET AL.*,

Petitioners

v.

SOUTHLAND ROYALTY COMPANY, *ET AL.*

Respondents

On Writ Of Certiorari To The United States Court of Appeals For the Fifth Circuit

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MOTION OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR LEAVE TO FILE BRIEF AMICUS CURIAE, AND AMICUS BRIEF FOR THE PUBLIC SERVICE COMMISSION

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CALIFORNIA, *ET AL.*,

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v.

SOUTHLAND ROYALTY COMPANY, *ET AL.*

Respondents

On Writ Of Certiorari To The United States Court of Appeals For the Fifth Circuit

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MOTION OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Public Service Commission of the State of New York (New York) herewith moves the Court, pursuant to Rule 42, for permission to file the attached brief, *amicus curiae*.

The Public Service Commission of the State of New York is a regulatory body established under the laws of New York State having responsibility *inter alia* over the sale of natural gas at retail within the state. Since the great bulk of the gas sold at retail by the New York gas distribution companies subject to its

authority is purchased from the interstate pipelines subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, 15 U.S.C., Section 717 *et esq.*, New York is of necessity vitally interested in the scope of the Federal Power Commission's authority over both the interstate pipelines and the sales of gas to such pipelines by producers of natural gas.

The Court of Appeals opinion under review in these cases would permit lessor-royalty holders to withdraw substantial quantities of gas at the terminal date of the lease, from the service being provided by producers to the interstate pipelines, and by the latter to their distribution company customers, without the necessity of seeking abandonment authority from the Commission under Section 7(b) of the Natural Gas Act. The rationale of the lower court's opinion has far greater implications, both with respect to the maintenance of adequate gas supplies by the interstate pipelines in a period in which many pipelines are already unable to meet the firm requirements of their customers, and with respect to the price of such gas.

While we would expect that many of the matters covered by New York's *amicus* brief will be addressed in the briefs of the petitioners, New York is seeking leave to file the attached brief to set forth New York's views on the important issues presented in this proceeding, including the relationship of the lower court's opinion to previous court determinations that the royalty interests of a lessor normally do not convert the lease transaction into a jurisdictional sale of the gas subject to the regulatory authority of the Federal Power Commission. This motion has been necessitated by our inability to secure the consent of all of the respondents to the filing of an *amicus* brief.

Accordingly, the Public Service Commission of the State of New York requests the Court to authorize the filing of the attached brief *amicus curiae* in these proceedings.

Respectfully submitted,

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August 31, 1977

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On Writ Of Certiorari To The United States Court of Appeals For the Fifth Circuit

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BRIEF FOR THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK *AMICUS CURIAE*

The Public Service Commission of the State of New York (New York) herewith files its brief, *amicus curiae* in support of the position of the petitioners in these cases that termination of a lease under which a producer has sold gas in interstate commerce for resale, pursuant to an unlimited certificate issued by the Federal Power Commission, does not authorize the lessor to withdraw the gas from the interstate market unless and until

abandonment authority is secured from the Commission pursuant to Section 7(b) of the Natural Gas Act, 15 U.S.C., Section 717f(b).

The Interest of the Amicus

The Public Service Commission of the State of New York is a regulatory agency established by the laws of New York State having jurisdiction *inter alia* over the service and rates of distribution companies selling natural gas at retail within the state. As such it is directly concerned with the operations of the Federal Power Commission under the Natural Gas Act, 15 U.S.C. §717, *et seq.*, relating to the sale of natural gas by producers to the interstate pipelines from whom New York distributors secure the bulk of their gas supplies, as well as over the interstate pipelines themselves. Prominent among such interests, particularly at a time when many of the pipelines serving New York distributors are not in a position to meet their firm obligations and have had to curtail service, is the Commission's responsibility under Section 7(b) of the Natural Gas Act. New York is thus directly interested in the decision of the court of appeals in issue in this proceeding, *Southland Royalty Co. v. Federal Power Commission*, 543 F. 2d 1134 (C.A. 5), which, if permitted to stand, could have the effect of withdrawing from the interstate pipelines, including those directly or indirectly serving New York, substantial volumes of gas upon which they depend to maintain their current levels of gas service.[1]

Argument

The principal issue in this proceeding, as New York sees it, is whether the provisions of Section 7(b) of the Natural Gas Act

[1]The gas involved in the instant proceedings has been sold to pipelines which do not serve New York, and New York, though a frequent participant in Commission proceedings, did not intervene in the cases before the Commission or in the lower court. The opinion below, if permitted to stand, would, however, have direct and immediate implications on existing service to New York customers.

protecting gas consumers from abandonment of service not consistent with the public interest, which normally supersede all private contractual provisions to the contrary,[2] can be thwarted where the person claiming private contractual rights to divert gas flowing in interstate commerce pursuant to outstanding Commission certificates is a lessor-royalty owner rather than the producer-seller himself. New York is convinced that the answer to this question can and must be in the negative.

While the case arises in context of a claim by the holders of reversionary interests in expired leases, the Court of Appeals rationale is not and, we are afraid, could not be so limited. The Court expressly bulwarked its decision by reference to a Commission opinion, since repudiated, which dealt with the right of a royalty owner to exercise contractual rights to convert his interest into a working interest and divert the gas to different uses, without first securing abandonment authority from the Federal Power Commission pursuant to the provisions of Section 7(b) of the Natural Gas Act.[3] As the petitioners have pointed out, there are numerous other situations pending before the Commission presenting variants of the issue of a lessor's contractual rights to remove gas from certificated service upon the happening of particular events of which lessor may disapprove. Not the least important to these, in the light of

[2]See *Sunray Mid-Continent Oil v. Federal Power Commission*, 364 U.S. 137; *Sun Oil Co. v. Federal Power Commission*, 364 U.S. 170; *United Gas Pipe Line Co. v. Federal Power Commission*, 385 U.S. 83; *Hunt v. Federal Power Commission*, 306 F. 2d 334 342 (C.A. 5); *Mitchell Energy Corp. v. Federal Power Commission*, 533 F. 2d 258 (C.A. 5); See also *Atlantic Refining Co. v. Public Service Commission of New York, (CATCO)*, 360 U.S. 378; *cf., Transcontinental Gas Pipe Line Corp. v. Federal Power Commission*, 488 F. 2d 1355 (C.A.D.C.) certiorari denied, 417 U.S. 921.

[3]*El Paso Natural Gas Co. v. Perry R. Bass.*, 48 F.P.C. 1269 (1972), overruled *Phillips Petroleum Co.* Opinion No. 750, ____ F.P.C. ____ Docket No. C176-48 (issued January 28, 1976), affirmed *Phillips Petroleum Co. v. Federal Power Commission*, 556 F. 2d 466 (C.A. 10). While this latter opinion purports to distinguish the Fifth Circuit's opinion in the present case, the basis for the distinction was expressly rejected by the court below. See *Southland Royalty Co. v. Federal Power Commission*, 543 F. 2d 1134 at 1138.

pending legislation to bring all new intrastate gas sales under federal regulaton,[4] are the common lease provisions providing for termination of a lease if any sale therefrom becomes subject to regulation affecting the price at which the gas can be sold.

The courts have held that under normal conditions a lessor-royalty owner does not make or participate in a sale in interstate commerce under the Natural Gas Act because, unlike the situation presented by the "lease sale" involved in the *Rayne Field* case, *United Gas Improvement Co. v. Continental Oil Co.* 381 U.S. 392, such royalty owner typically "has no control over any incident of such sale either as to the quantity to be sold, the price to be paid, the identity of the purchaser or whether it shall be sold in interstate or intrastate commerce" *Mobil Oil Corporation v. Federal Power Commission* 463 F. 2d 256, 262 (C.A.D.C.), certiorari denied, 406 U.S. 976 (1972). The court made clear, however, that where the lessor in fact exercises some of these normal indicia of a sale it might well qualify as a natural gas company making a sale in interstate commerce. See 463 F. 2d at 266. Obviously, the right to terminate an ongoing sale is at least as important under the regulatory scheme as the right to control the terms of the initial dedication of the gas to interstate commerce. A serious question thus exists as whether a royalty owner able to exercise such right would not by that action be converting his royalty interest into that of a participant in the sale made by the producer, who of course is compelled to maintain service.

However, the case before the Court does not, in our view, require resolution of this issue. For as this Court conclusively determined in *Sunray Mid-Continent Oil Company v. Federal Power Commission* 364 U.S. 137, (1960), the obligations imposed by Congress under Section 7(b) of the Natural Gas Act to maintain certificated service unless and until the Commission finds that the available supply of gas is depleted or present or future public convenience or necessity permit its abandonment, apply to services initiated by a producer of natural gas as well as

[4]See H.R. 8444, 95th Cong., 1st Sess., approved by the House of Representatives, August 5, 1977, Sections 402(5), 404-406.

to service by pipelines to local gas distributors. There is nothing in the Natural Gas Act or in the Congressional rationale underlying Section 7(b) to suggest that this Congressionally-mandated protection of gas consumers from inopportune service disruption is any less applicable where the private contractual rights with which it interferes are those of a lessor-royalty owner rather than those of the producer lessee. In either case the exercise of the paramount federal authority supersedes private rights to a different course of action.

Under some circumstances the lessor conceivably might have a cause of action in damages against the lessee—though in the present situations it would not appear that the producers have taken any actions in derogation of their lease responsibilities. And the termination of the lease places the lessors or their successors in the position of alternatively being able to seek abandonment authority from the Commission, or to seek any higher available rates for continued service, free of contractual limitations.[5] What they cannot do as lessors any more than as producers is unilaterally to divert available gas supplies and the continuing jurisdictional service dependent thereon, from the interstate pipelines to whom the gas had previously been dedicated under unlimited-term certificates.

[5]Under the Commission's governing rate structure, recently approved in *American Public Gas Association v. Federal Power Commission*, F. 2d _____ (C.A.D.C., Case Nos. 76-2000, *et al.*, decided June 16, 1977),when a producer and pipeline enter into a new contract after an initial sales contract is no longer in force, the permissible maximum rate for such sales may increase from 29.5 cents per mcf, plus annual one-cent escalations, to 52.0 cents, plus similar escalations. Thus, if the opinion of the Court of Appeals is correct, the lessor upon entering into a new contract to continue to sell the gas to the pipeline previously receiving the gas at the 29.5 cent base rate would be automatically entitled to the higher rate..

CONCLUSION

For the reasons set forth herein, the opinion below is erroneous and the case must be remanded with instructions to affirm the Commission order in issue.

Respectfully submitted.

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August 31, 1977

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Nos. 76-1114 *ET AL.*

THE PEOPLE OF THE STATE OF CALIFORNIA, *ET AL.*,

Petitioners,

vs.

SOUTHLAND ROYALTY COMPANY, *ET AL.*,

Respondents.

On a Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* ON BEHALF OF ASSOCIATED GAS DISTRIBUTORS AND BRIEF *AMICUS CURIAE*

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August 31, 1977

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Respondents.

On a Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Associated Gas Distributors (AGD)[1] hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of attorneys for petitioners has been obtained, but counsel for respondent Southland Royalty Company, *et al.* objected on the grounds that AGD's brief might address "broader issues than those directly raised by the facts of this 50-year, fixed-term lease." AGD believes it most important for this Court to address those "broader issues" and, accordingly, files the present motion pursuant to Rule 42(3).

[1] A list of AGD member companies is attached.

I

STATEMENT OF INTEREST

Associated Gas Distributors is an unincorporated association of gas distribution companies serving over 11 million customers along the Eastern Seaboard or approximately 25 percent of the Nation's natural gas customers. AGD member companies rely almost exclusively on interstate pipeline companies for pipeline gas supplies. As the principal pipelines supplying gas to the East Coast have sharply curtailed deliveries, beginning about 1970, AGD member companies have experienced increasing difficulty in providing adequate and reliable service to their customers, as required by various state laws governing utilities.

Since AGD companies depend heavily on gas supplies available to the interstate market, they are deeply concerned that the decision of the Court of Appeals will result in substantial volumes of flowing supplies being diverted to intrastate markets and may seriously disrupt the stability of interstate dedications of natural gas in the future. Accordingly, AGD member companies may be adversely and directly affected by the outcome of the present case.

II

REASONS FOR GRANTING THE MOTION

On its face, the decision of the Court of Appeals applies only to the disposition of natural gas production from two 50-year, fixed-term leases that were entered into some 13 years before the Natural Gas Act was passed. That decision held that, notwithstanding the provisions of Section 7(b) of the Natural Gas Act, service could be effectively abandoned at the expiration of the underlying lease. The opinion failed to address either the question of the need to apply federal law, or the impact that applying Texas law may have on gas consumers served through the interstate market. The approach adopted by the Court of

Appeals, if affirmed, will have serious and far-reaching implications for the stability and security of interstate gas supplies. Over the last ten years, the percentage of new gas discoveries dedicated to the interstate market has dropped precipitously, making the security of flowing supplies all the more crucial to adequate interstate service. *See* Appendix. Yet the decision of the Court of Appeals would allow even these flowing supplies to be diverted from interstate sales upon expiration of the underlying leases, completely free from Commission scrutiny under Section 7(b) of the Natural Gas Act.

Future transactions will be structured to utilize state property laws in circumvention of effective federal regulation. For example, landowners could insist upon short-term leases, thereby obtaining the benefit of immediate access to interstate markets, but retaining the option of diverting the gas to intrastate sales upon expiration of the short term lease.

All of the petitioners have consented to AGD's filing of a brief *amicus curiae*. Although they may be expected to advance generally the interests of natural gas purchasers, none of them represents the East Coast purchasers that have been affected most deeply by continuing curtailment of natural gas deliveries.

This Court must look beyond the narrow question, as defined by respondents, to the issues of security and stability of present and future interstate natural gas supplies and the integrity of federal jurisdiction under the Natural Gas Act.

III

CONCLUSION

Accordingly, and for the above reasons, Associated Gas Distributors respectfully urge the Court to grant the present motion so that AGD may present its views in the attached brief.

Respectfully submitted,

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IN THE

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Respondents

On A Writ of Certiorari To The United States Court of Appeals for the Fifth Circuit

---

BRIEF AMICUS CURIAE ON BEHALF OF ASSOCIATED GAS DISTRIBUTORS IN SUPPORT OF PETITIONERS

QUESTION PRESENTED

Whether the jurisdiction of the Federal Power Commission over the certificated natural gas service of a mineral lease owner lapses automatically upon expiration of the underlying mineral lease.

INTEREST OF AMICUS CURIAE

Associated Gas Distributors (AGD)[1] is an unincorporated association of gas distribution companies serving over 11 million customers along the Eastern Seaboard, or approximately 25 percent of the nation's natural gas customers. AGD member companies rely almost exclusively on interstate pipeline companies for pipeline gas supplies. As the principal pipelines supplying gas to the East Coast have sharply curtailed deliveries, beginning about 1970, AGD member companies have experienced increasing difficulty in providing adequate and reliable service to their customers, as required by various state laws governing utilities.

Since AGD companies depend heavily on gas supplies available to the interstate market, they are deeply concerned that the decision of the Court of Appeals will result in substantial volumes of flowing supplies being diverted to intrastate markets and may seriously disrupt the stability of interstate dedications of natural gas in the future. AGD membership companies will be adversely and directly affected if the decision of the Court of Appeals is upheld. Accordingly, AGD submits the present brief *amicus curiae* in support of petitioners.

ARGUMENT

I. The Decision Of The Court Of Appeals Nullifies The Requirement That Natural Gas Service In Interstate Commerce May Not Be Abandoned Without Prior Approval Of The Federal Power Commission

The Court of Appeals reversed the decision of the Commission on the deceptively simple basis that:

> "a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the term of his interest." 543 F.2d at 1137.

This holding would nullify the primary function of Section

[1]A list of AGD member companies is attached.

7(b) of the Natural Gas Act[2] which is to protect the interstate consumer from abrupt termination of natural gas service on which he has come to rely, without permission and approval of the Federal Power Commission. That purpose applies with equal force to termination of service by natural gas producers as well as by interstate pipeline transmission companies.

The starting point of interstate natural gas service, in most cases, is the granting of a mineral lease for the exploitation of underlying hydrocarbons. If expiration of such a lease automatically obviates the need for Commission abandonment authorization, the scope of Section 7(b) is greatly reduced. Upon termination of the underlying lease, certificated service would automatically be freed of the requirement of the Natural Gas Act that abandonment is to be permitted only where the Commission determines "that the present or future public convenience and necessity permit such abandonment."

In enacting Section 7(b), Congress did not so limit its scope. Rather, the language requires Commission approval prior to the termination of "*any* service," and authorizes termination of interstate service on only two grounds. First, service may be abandoned when the natural gas reservoirs underlying the certificate service are exhausted to the extent that "continuance of service is unwarranted." Second, abandonment may be warranted where the Commission finds that it is otherwise in the public interest.

That Congress required abandonment proceedings even

[2]Section 7(b) provides that:

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or *any service* rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, *or that the present or future public convenience and necesity permit* such abandonment. 15 U.S.C. §17 f(b). (Emphasis added).

when the natural gas reservoir underlying certificated service is exhausted confirms the broad construction of Section 7(b) required in the present case. Even though Congress could obviously not affect the physical fact of depletion, the Natural Gas Act explicitly requires natural gas companies to seek abandonment authorization *prior* to terminating interstate service. Since Congress mandated abandonment proceedings even in the face of physical impossibility, it follows *a fortiori* that Section 7(b) applies in the case of claimed *legal* impossibility.[3] The key in both cases is that there must be an opportunity for the Commission to determine whether the cessation of service, upon which interstate consumers have relied, is permitted by the public convenience and necessity.

The Commission may find abandonment at the expiration of a lease to be in the public interest. In fact, the case may be somewhat appealing when the lease was entered into a half-century earlier. But in many cases, abandonment merely because the underlying lease has expired may prove contrary to the public interest. In any event, the determination is vested exclusively in the expertise of the Commission, subject only to judicial review.

Decisions of this Court interpreting the Natural Gas Act or similar language in other legislation have further emphasized that the key to abandonment is whether there is a withdrawal of interstate *service*, not the expiration of underlying leases or contracts. In *Smith v. Hoboken Railroad Warehouse and Steamship Connection Company*, 328 U.S. 123 (1946), the Court construed Section 1(18) of the Interstate Commerce Act (added by Section 402 of the Transportation Act of 1920, 41 Stat. 477-478), upon which Section 7(b) of the Natural Gas Act was

[3]The recent decision of the Court of Appeals for the Tenth Circuit in *McCombs v. FPC*, 542 F.2d 1144 (10th Cir. 1977), is not to the contrary. There the Commission acknowledged the fact that there had been no production for an extended period, but merely sought an abandonment application "for the record". 542 F.2d at 1148. The Court of Appeals held that there had been an abandonment, even though no formal FPC abandonment proceeding had taken place. This judicial recognition of "*de facto* abandonment" is not applicable to the present case in which the Commission has specifically ruled that abandonment authorization must be sought.

modeled.[4] In *Hoboken Railroad*, a lease entered into prior to the 1920 Act was terminated pursuant to its terms and the question arose whether the lessor was obligated to continue operations under the terms of the ICC certificate. The Court held that an abandonment certificate was required under Section 1(18) "whether the lessee or the lessor is abandoning operations." 328 U.S. at 130.

In the companion case of *Thompson v. Texas Mexican Railway Company*, 328 U.S. 134 (1964), the Court similarly held that despite the termination of a "trackage" agreement allowing one carrier to operate its trains over the tracks of another, abandonment authorization was still required under Section 1(18). 328 U.S. at 144-145. Moreover, the Court explicitly noted that it was immaterial that the trackage contract (like the lease in *Hoboken, supra*) was entered into prior to enactment of the abandonment provisions. *Id.* The obligation to continue service under the lease or under the trackage contract was not one imposed by the parties, but by the supervening action of Congress.

The analogue under the Natural Gas Act to *Texas Mexican Railway, supra*, is *Sunray Mid-Continent Oil Company v. FPC*, 364 U.S. 137 (1960). In *Sunray*, the Court rejected the contention that the duration of a permanent certificate could be controlled by the term of the gas sales contract of the parties. After discussing the language of the Natural Gas Act and emphasizing that abandonment of the interstate service must be reviewed by the FPC irrespective of the expiration of the term of the sales agreement, the Court concluded that a contrary result would make effective regulation turn on the "desire of the regulated enterprise to be subject to it." *Sunray, supra*, 364 U.S. at 151. (Footnote omitted). Responding to the contention that its decision interfered with the "integrity" of the contract, the Court noted that:

[4]*See* testimony of John E. Benton, General Solicitor, National Association of Railroad and Utility Commissioners, before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 74th Cong., 2d Sess., at 98 (1936).

> "[t]he obligation that petitioner will be under after the contract term will not be one imposed by contract but by Act."

Id. at 155. *See also Sun Oil Company v. FPC*, 364 U.S. 170 (1960). The obligation to continue interstate service was described aptly by the Court of Appeals in *Hunt v. FPC*, 306 F.2d 334, 342 (5th Cir. 1962):

> "Like the ancient covenant running with the land the duty to deliver and sell flows with the gas from the moment of first delivery down to the exhaustion of the reserve, or until the Commission, on appropriate terms, permits cessation of service under §7(b)."

In *United Gas Improvement Company v. Continental Oil Co.*, 381 U.S. 392 (1965) (hereafter cited as the *Rayne Field* case), after the Commission had refused to certificate a conventional sale to an interstate pipeline company, the parties restructured the transaction as the sale of the producer's mineral lease interest, rather than the natural gas produced from it. The Commission held initially that it had no authority over the sale of leases as opposed to the sale of natural gas. That determination was reversed on appeal to this Court. The Court made clear that the result did not assume that the new transaction was not in good faith. 381 U.S. at 400. But the opinion of Mr. Justice Harlan focused on the "significant and determinative economic fact," 381 U.S. at 392, that the restructured transaction accomplished the transfer of large amounts of natural gas to an interstate pipeline for resale.

In the present case, the Court of Appeals allowed legal forms to govern the result, rather than the economic reality of abandoned natural gas service. Yet as noted above, the provisions of Section 7(b) of the Natural Gas Act are directed specifically to the termination of interstate *service*, not to the expiration of contractual rights or obligations which may bind the parties under state law. *Sunray, supra*, 364 U.S. at 150-151.

Just as the abandonment provisions of the Transportation

Act of 1920 applied equally to contracts, *Texas Mexican Railway*, or to the underlying leases, *Hoboken Railroad*, so the similar provision of the Natural Gas Act must apply to the underlying leases in this case as well as the sales contracts at stake in *Sunray*.

There is nothing unusual or unique in the extension of federal jurisdiction to the reversionary owners in this case. The ICC cases noted above confirm that fact. Nor is it unusual for federal law to displace "black letter" state property rules that conflict with a federal regulatory scheme.

In *United States v. Little Lake Misere Land Company*, 412 U.S. 580 (1973), the Court held that federal law governed the interpretation of a federal land acquisition authorized by the Migratory Bird Conservation Act, 16 U.S.C. §715 *et seq.* In so holding the Court declined to follow Louisiana property law:

> "Since *Erie*, and as a corollary of that decision, we have consistently acted on the assumption that dealings which may be "ordinary" or "local" as between private citizens raise serious questions of national sovereignty when they arise in the context of a specific constitutional or statutory provision. . . ."

412 U.S. at 592. Although the present case differs in that the federal government was not a party to the 50-year leases in question, it raises serious questions as to the ability of the FPC to assure the integrity of regulation under the Natural Gas Act. Allowing the term of the certificate to be determined by the expiration of the underlying lease under state law, would create a gaping hole in the regulatory scheme. Rather than closing off an "attractive gap" between federal and state regulation, the decision below creates a new gap, contrary to the intent of Congress in enacting the Natural Gas Act, *FPC v. Transcontinental Gas Pipe Line Corporation*, 365 U.S. 1, 22 (1961); *California v. Lo-Vaca Gathering Company*, 379 U.S. 366, 370 (1965).

The Court has also declined to recur to local personal

property rules in determining the disposition of insurance proceeds payable under the National Service Life Insurance Act, *Wissner v. Wissner*, 338 U.S. 655 (1950). In the area of federal taxation, the refusal to follow the characterization of a transaction under state property law is commonplace. *See e.g. Morgan v. Commissioner*, 309 U.S. 78, 80 (1940) ("federal law must prevail no matter what name is given to the interest or right by state law"), and *Commissioner v. Tower*, 327 U.S. 280 (1946). *See also Burnet v. Harmel*, 287 U.S. 103 (1932), holding that the fact that an oil and gas lease is treated as a sale of oil in place by state law is immaterial in deciding whether it is a "sale. . . of capital assets" under federal law.

The Court of Appeals erred by assuming that abandonment authorization was not required merely because, *under Texas law*, the lessees could do nothing to affect the reversionary interest. The fundamental error in the decision was to apply state law. Paraphrasing this Court's language in *Sunray, supra*, the obligation that the lessor is under after expiration of the lease term is not one imposed or created by the lessee, but by the Natural Gas Act itself. Federal, rather than state, law governs.

II. If Allowed To Stand, The Decision Of The Court Of Appeals Will Have Adverse Implications For Interstate Consumers Beyond The Facts of This Case.

The importance of this proceeding is not limited to cases where long-term gas leases expire and the reversionary interests seek to divert production to more profitable intrastate sales.[5] At

[5]There are, however, a number of other pending proceedings involving lease expirations. *See* FPC orders issued March 12, 1976, holding in abeyance further proceedings in the following cases, pending decision on appeal in the present case:

1) *Kerr McGee Corporation, et al.*, Docket No. C176-405 (expiration of 50-year fixed term lease) *app. docketed sub nom. The Fort Worth National Bank*, etc., *et al. v. FPC*, No. 76-2808 (5th Cir. July 1, 1976);
2) *Henry Clay Sullivan, et al.*, Docket No. C176-316, *app. docketed*, No. 76-2428 (5th Cir. May 24, 1976);
3) *Dore Corporation, et al.*, Docket No. C176-315, *app. docketed* No. 76-2428 (5th Cir. May 24, 1976); *and*
4) *Briercrest Oil Company*, Docket No. C176-396.

issue, rather, is the ability of the FPC to assure stable and reliable supplies of natural gas for the interstate market. If the property law approach advanced by the court below is upheld, future transactions inevitably will be structured to oust federal regulatory authority in the name of "freedom of contract" and the "integrity of state property law."

For example, landowners could begin to insist upon short-term leases. During the lease term, the leaseholder might commence sales in interstate commerce, thereby allowing the landowner to benefit from the availability of a market for his gas. But under the Court of Appeals decision, at the end of the term the landowner could reassess the relative burdens and benefits of interstate deliveries and effectively and abruptly terminate service.[6] It is no answer to argue that the Commission could refuse to certificate service from short-term leases—in that case the entire supply might never be made available to the interstate market.

The danger of other regulatory "loopholes" was identified and discussed in *Sunray, supra*, at 143-47. For example, a landowner might be willing to release the land to the producer for additional interstate deliveries only if the producer agreed to a higher royalty. The producer, his prior certificate having expired with the first lease, could then file new and higher "initial rates" under Section 4(c) of the Natural Gas Act and effectively circumvent the provisions of Section 4(d) dealing with rate changes.

Phillips Petroleum Company v. FPC, 556 F.2d 466 (10th Cir. 1977) dealt with another avenue open to leaseholders, based on retained overriding royalty interests subject to an option to convert to a specified working interest at some point in the future. It is a fairly common practice for a mineral lease owner (typically

[6]*Compare Arkansas Louisiana Gas Company v. Amarex, Inc.*, Opinion Nos. 798 and 798-A, issued May 9, 1977 and July 1, 1977, *appeal docketed sub nom. Amarex, Inc. v. FPC*, No. 77-1503 (10th Cir. July 7, 1977), involving renewal of a five-year lease executed two years after an interstate gas sales contract was signed.

a major oil producing company) to "farm out" lease acreage to a smaller producer for drilling. Under the terms of the farm-out agreement, the sub-lessor may retain an overriding royalty interest while also retaining an option to convert the royalty interest into a working interest after recovery by the sub-lessee of the costs of drilling and equipping the well.[7]

In *Phillips*, the producer exercised an option to convert to a working interest and sought to qualify its share of production for a much higher price asserting that *its share* of gas had not previously been sold in interstate commerce. The Commission ruled that Phillips' gas did not so qualify. On appeal, the Tenth Circuit dismissed Phillips' contention that the FPC decision "does violence to the law of real property," emphasizing this Court's decisions that interstate *service* cannot be abandoned without Section 7(b) approval. 556 F.2d at 469.

Similar transactions have surfaced in *Murphy Oil Corporation*, Order Modifying Initial Decision, issued July 6, 1977 in Docket No. R175-109; and *Transco Exploration Company*, Order Granting Rehearing For Purposes of Further Consideration, issued August 17, 1977 in Docket No. C177-306.

If the contrasting approach taken by the Fifth Circuit is deemed controlling, a cloud will be cast on the *Phillips* decision and a new regulatory gap opened. Undoubtedly a variety of legal arrangements will seek to exploit the gap which the decision below would create. And as pressures generated by the continuing natural gas shortage intensify, landowners and producers may be expected to seek every opportunity to maximize the return on their productive resources. If this Court affirms the decision below, those efforts will be redoubled and transactions designed solely to exempt the parties from troublesome federal regulation will be honed to perfection. The stability and security of interstate service will be undermined progressively.

---

[7]See 2 Williams & Meyers, *Oil & Gas Law*, §426 at 456-457 (1975).

Such a result is entirely inconsistent with the purposes of the Section 7(b) Natural Gas Act as declared by Congress and interpreted by this Court:

> "The Act was framed so as to afford consumers a complete, permanent and effective bond of protection from excessive rates and changes."

Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378, 388 (1959) (the "CATCO" case). Under the decision below, regulatory protection will last only as long as the underlying lease. The parties will thus be able to determine exactly for how long they are willing to reap the benefits of the interstate market without incurring any obligation beyond the term of the lease. Such a result goes far beyond the rights of the reversionary interest holders in the present case, and will seriously undermine effective regulation under the Natural Gas Act.

CONCLUSION

The decision of the Fifth Circuit is erroneous and if allowed to stand will significantly impair the effective administration of the Natural Gas Act. For the reasons stated above, we respectfully request this Court to reverse the decision below.

Respectfully submitted,

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August 31, 1977

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 1977, three copies of the foregoing Motion For Leave To File Brief Amicus Curiae And Brief Amicus Curiae were mailed, postage prepaid, to counsel for all parties of record.

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APPENDIX

EXHIBIT 10 TO FPC
OPINION No. 770—A
(November 5, 1976).

Total Reserve Additions

Interstate v. Intrastate
Associated and Non-Associated Gas
(Excludes Alaska)

Year	AGA Reserve Additions Excluding Revisions (Tcf)	Interstate New Supply[a] Tcf	Interstate New Supply[a] Percent	Inferred Intrastate New Supply[b] Tcf	Inferred Intrastate New Supply[b] Percent
1966	14.8	10.0	68	4.8	32
1967	14.8	9.9	67	4.9	33
1968	9.8	6.4	65	3.4	35
1969	9.6	6.2	64	3.4	36
1970	11.3	3.5	31	7.8	69
1971	11.1	2.2	20	8.9	80
1972	10.7	5.0	47	5.7	53
1973	10.1	1.7	17	8.4	83
1974	9.7	2.4	25	7.3	75
1975	10.0	1.3[c]	13	8.7	87

---

a/Form 15, FPC, excluding revisions.

b/Derived by assuming that intrastate reserve additions are equal to the difference between total AGA reserve additions and the reserve additions committed to the interstate market.

c/Preliminary.

ASSOCIATED GAS DISTRIBUTORS

Atlanta Gas Light Co.
Baltimore gas and Electric Co.
Bay State Gas Co.
The Berkshire Gas Co.
Boston Gas Co.
Bristol & Warren Gas Co.
The Brooklyn Union Gas Co.
Cape Cod Gas Co.
Central Hudson Gas & Electric Corp.
Chesapeake Utilities Corp.
City of Holyoke, Mass., Gas & Electric Dept.
City of Westfield Gas & Electric Light Dept.
Commonwealth Gas Co.
Concord Natural Gas Corp.
The Connecticut Gas Co.
Connecticut Natural Gas Corp.
Consolidated Edison Company of New York, Inc.
Delmarva Power & Light Co.
Elizabethtown Gas Co.
Fall River Gas Co.
Fitchburg Gas & Electric Light Co.
Gas Service, Inc.
The Hartford Electric Light Co.
Haverhill Gas Co.
Long Island Lighting Co.
Lowell Gas Co.
Lynchburg Gas Co.
Manchester Gas Co.
New Bedford Gas & Edison Light Co.
New Jersey Natural Gas Co.
New York State Electric & Gas Corp.
North Attleboro Gas Co.

North Carolina Natural Gas Corp.
Northern Utilities, Inc.
The Pequot Gas Co.
Philadelphia Electric Co.
Philadelphia Gas Works
Piedmont Natural Gas Company, Inc.
Providence Gas Co.
Public Service Company of North Carolina, Inc.
Public Service Electric & Gas Co.
Rochester Gas & Electric Corp.
South County Gas Co.
South Jersey Gas Co.
The Southern Connecticut Gas Co.
Tiverton Gas Co.
UGI Corporation
Valley Gas Co.
Washington Gas Light Co.

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Nos. 76-1114,
76-1133 and 76-1587

IN THE

Supreme Court of the United States

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Petitioners,

v.

SOUTHLAND ROYALTY CO., *et al.*,

Respondents

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

OBJECTIONS OF RESPONDENTS TO MOTIONS OF ASSOCIATED GAS DISTRIBUTORS AND NEW YORK PUBLIC SERVICE COMMISSION FOR LEAVE TO FILE AMICUS BRIEFS

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OBJECTIONS OF RESPONDENTS TO MOTIONS OF ASSOCIATED GAS DISTRIBUTORS AND NEW YORK PUBLIC SERVICE COMMISSION FOR LEAVE TO FILE AMICUS BRIEFS

Pursuant to Rules 35 and 42, Respondents Southland Royalty Company, et al.[1] object to and respectfully urge the Court to deny the motions of the Associated Gas Distributors (AGD) and the Public Service Commission of New York (Service Commission) for leave to file briefs *amicus curiae* in this proceeding. We object on two grounds.

[1] These objections are filed on behalf of the Southland Royalty Company, the trustees under the will of Warren Wright, the Penn interests, Exxon Corporation and Texaco Inc.

1.

First, AGD and Service Commission each allege that the decision of the court of appeals would permit respondents, owners of revisionary interests in acreage formerly subject to 50-year fixed term leases which expired by their terms, to "*withdraw* substantial quantities of gas . . . from the service" in interstate commerce being conducted by the fixed-term lessee. (Service Commission, Motion at p. 2, emphasis added; *see* AGD brief at p. 8, which uses "divert" in a similar fashion).

This deliberately begs the question presented: whether the lessee, Gulf Oil Corporation, ever had and exercised the legal power to dedicate to interstate commerce not only the gas it owned pursuant to its lease, but also the gas that might be produced by the respondents after the expiration of Gulf's lease. If, as the court below held, Gulf lacked this power, respondents' gas has *never* been dedicated to interstate service. If respondents' gas was never dedicated to interstate service by Gulf, it is not being "withdrawn" or "diverted" by respondents.

2.

Second, AGD and Service Commission both contend that although this case involves the expiration of a fifty-year fixed-term lease, the decision below "is not limited" to cases involving leases of this now-extinct type (AGD Brief at p. 8), but has "far greater implications" (Service Commission Motion at p. 2). In support of this conclusory allegation AGD and Service Commission hypothesize a variety of fact situations in which the "approach advanced by the court below" (AGD Brief at p. 9) would supposedly be in derogation of the Natural Gas Act.

None of these hypotheses is supportable on the record in this case. None was relied on by the agency in the orders under review and thus none can be advanced to sustain its orders on appeal. *FPC* v. *Texaco Inc.*, 417 U.S. 380 (1974). Each was offered unsuccessfully by the petitioners to the court below. Each is contained in the briefs of the two petitioners who have timely filed briefs on the merits in this Court, and presumably will be found as well in the

brief of the Federal Power Commission, which was due on August 31, 1977, but has not yet been filed.

Two of these arguments from hypotheticals are particularly objectionable. AGD says that the decision below will lead to lessors insisting on short fixed-term leases, so that although the lessee can begin interstate sales, after termination the lessor can "reassess the relative burdens and benefits of interstate deliveries" (AGD Brief at p. 9). This argument overlooks one of the most elementary facts of the gas producing industry — the ordinary producer's lease is the basis of his investment in drilling. Thus, no producer would accept a short fixed-term lease because it would deprive him of his opportunity to recover his investment, by prematurely terminating his right to produce and sell what he finds. This is why the ordinary oil and gas lease continues for "so long . . . as production continues in paying quantities." It also overlooks the Federal Power Commission's ability under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, to refuse to certificate the lessee's sale of gas attributable to such hypothetical leases or to impose on the certificate whatever conditions it finds necessary to protect the public interest.

Service Commission says that the present case has implications for cases in which the lessor exercises a voluntary power to terminate, and both Service Commission and AGD give *Phillips Petroleum Co.* v. *FPC*, 556 F.2d 466 (10th Cir. 1977), as an example. Unlike *Phillips*, the present case does *not* involve a voluntary termination; the lessee's lease terminated by operation of law. *Phillips*, moreover, involved an attempt to take a portion of the gas attributable to the *same* leasehold interest from which the lessee had commenced interstate service and make a new sale. 556 F. 2d at 470. Hence the Tenth Circuit held Phillips to be an assignee under local property law, subject to the encumbrances, including interstate service, placed on the leasehold interest by the lessee. *Id.* As the Tenth Circuit noted, this decision is entirely consistent with the holding of the Fifth Circuit in the present case. 556 F.2d at 470-471.

In short, AGD and Service Commission offer no valid reason why this case should not be seen for what it is: a case involving whether the lessee under a rare, fifty-year fixed-term lease could and did sell and dedicate to interstate service gas he did not own. On this legal issue, AGD and Service Commission raise no arguments and cite no authorities other than those relied on by the petitioners. Accordingly, their motions for leave to file amicus briefs should be denied.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

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NOS. 76-1114, et al.

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* * *

On Writs of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

* * *

BRIEF AMICUS CURIAE ON BEHALF OF THE STATE OF TEXAS IN SUPPORT OF RESPONDENTS

* * *

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* * *

BRIEF AMICUS CURIAE ON BEHALF OF THE STATE OF TEXAS IN SUPPORT OF RESPONDENTS

* * *

QUESTION PRESENTED

When the lessee under a 50-year fixed-term mineral lease makes a certificated interstate sale of his leasehold gas, does he thereby encumber the land itself with an interstate sales obligation which outlives his lease?

NATURE OF THE CASE AND INTEREST OF AMICUS CURIAE

In this case, the Federal Power Commission (Commission) attempted to force Southland Royalty Company, et al. (Southland Royalty), owners of gas produced from the Waddell Ranch, "to enter into an interstate sale against their will." (A. 712). Specifically, in Opinions 737 and 737-A, the Commission ordered Southland Royalty to sell its gas to El Paso Natural Gas Company (El Paso), for resale to "low priority customers" in California.[1] Southland Royalty has contracted to sell its gas to Intratex Gas Company, which serves the citizens and industries of Houston, Texas, and environs.

The State of Texas, understandably, favors Southland Royalty's choice of purchaser. But we appear here as amicus curiae because of our concern with the basis of the Commission's holding and its potential application to other facts.

The Commission held in Opinions 737 and 737-A that Gulf Oil Corporation (Gulf), by selling surplus residue casinghead gas attributable to its 50-year fixed-term leasehold interest in the Waddell Ranch, thereby dedicated to interstate "service" all such gas ever produced from the Waddell Ranch. The Commission held that, although Gulf only owned a *lease*, it " had power to encumber" (A. 712) the *acreage* itself with an obligation to sell gas to El Paso in interstate commerce.

---

[1]See Petition for Certiorari of the People of the State of California at p. 7. The "low priority" uses referred to are boiler fuel uses. Such uses are being phased out in Texas at the order of the Railroad Commission. They would be phased out nationally if the National Energy Plan passes. *See* H. R. 8444, Sec. 611 through 613.

According to the Commission, this obligation applied to any casinghead gas produced from the Waddell Ranch, regardless of owner. The Commission analogized this alleged obligation created by Gulf to a "covenant running with the land." (A. 606).

Admittedly, this case arises on highly unusual facts. Gulf's lease was a 50-year fixed-term lease entered into in 1925. By 1928, only three years later, it was recognized that such lease "had long been in disuse" and were "of no practical importance" in Texas.[2] Virtually all modern oil and gas leases, by contrast, provide that the leasehold estate remains in effect so long as either oil or gas is produced from the lease in paying quantities.[3]

The Commission's holding in this case is not, however, limited to 50-year fixed-term leases. The Commission has attempted to apply the same alleged "covenant running with the land" to ordinary oil and gas leases. *See Wessely Energy Corp. v. Arkansas-Louisiana Gas Co. and the FPC*, No. CIV-77-0159-B (W.D. Okla., issued July 29, 1977, appeal pending); *Northern Natural Gas Co. v. Crawford*, FPC Docket No. CS71-6, orders issued September 29, 1976, and December 1, 1976, *appeal pending sub nom. Harrison v. FPC*, 5th Cir. No. 76-4318. There have been hundreds of thousands of ordinary leases. Applied to ordinary leases, the doctrine that a lessee has the "power to encumber" the land with an obligation to sell any gas produced therefrom in interstate commerce would, we believe, have disastrous

---

[2]*See* Walker, *The Nature of the Property Interests Created By An Oil & Gas Lease in Texas*, 7 Tex. L. Rev. 1, 15 (1928).

[3]*See* 2 E. Kuntz, Law of Oil & Gas §26.1 at p. 244 (1964); 1A W. Summers, Law of Oil & Gas §153 at p. 381 (1959).

consequences for exploration for and development of natural gas. As amicus curiae, Texas seeks to explain the nature and demonstrate the scope of these consequences.

We recognize that this Court sits to decide issues of law, not policy. But the Commission itself concedes that this case poses a "difficult situation" (A. 607), and in such a case it seems appropriate to consider the possible policy consequences of the Commission's holding. Furthermore, in their appellate briefs the Commission and its supporters have relied heavily on policy arguments. Since the Commission heard no evidence on policy issues[4] and the orders under review make no reference whatsoever to policy arguments,[5] it may be that this Court should not entertain such arguments.[6] If it does entertain such arguments, this Court should at least hear both sides.

---

[4]The Commission determined that "there was no need to hold an evidentiary hearing" in this case. A. 602.

[5]In particular, the Commission's orders never mention an argument upon which it and its supporters now rely heavily: the claim that its decision is necessary to prevent other parties, in future situations, from entering into short fixed-term leases in an attempt to thwart the Commission's jurisdiction. See Part III, infra.

[6]This Court has repeatedly held that an agency's order must be upheld, if at all, "on the same basis articulated in the order by the agency itself." The Court has therefore refused to "accept appellate counsel's *post hoc* rationalizations for agency action." *FPC v. Texaco Inc.*, 417 U.S. 380, 397 (1974), *quoting Burlington Truck Lines v. U.S.* 371 U.S. 156, 168-69 (1962); *Securities & Exchange Commission v. Chenery*, 332 U.S. 194, 196 (1947). The policy arguments of the Commission and its supporters are precisely such "post hoc rationalizations of appellate counsel."

The State of Texas is well qualified to present the policy arguments against the Commission's position. Texas produced almost 40% of United States natural gas production in 1975, and has a compelling interest in the law affecting exploration for and sale of natural gas. The citizens of Texas own millions of acres of state land. The income from this land, which consists almost exclusively of the proceeds from the sale of oil and gas, is dedicated to the maintenance of a system of free public s[illegible]cls and state universities. *See* Art. 7, Sections 2 and 11, Constitution of the State of Texas. Moreover, severance taxes on the sale of Texas-produced natural gas from private as well as state lands amounted to $260 million in fiscal 1975 and are a major source of state revenues. The Commission intends to use its "covenant" to force the owners of gas reserves discovered in the future to sell their gas in the interstate market, if any prior lessee had dedicated his leasehold gas to that market.[7] This would reduce both types of state income from natural gas.

Furthermore, natural gas is vital to the State's economy. According to the United States Bureau of Labor Statistics, production of crude oil and natural gas employed more than 122,500 Texans in 1975, manufacture of drilling equipment employed 40,700 more, and the petrochemical industry, the State's most important in terms of value added, employed another 34,700.

Thus, to Texas, natural gas exploration and production means employment and education. The Commission's proposed federal "covenant" running with the land threatens these vital interests.

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[7]Of course, the land in this case is privately owned, so this brief will not further address the possible applicability of the Commission's "convenant" to lands of which the State of Texas is lessor.

SUMMARY OF ARGUMENT

The Commission held in the orders under review that a lessee can dedicate to an interstate sale all gas ever produced from the acreage he leases. The "covenant" he thereby allegedly created would "run with the land" and be binding forever, notwithstanding the termination of his lease.

Such a "covenant" would badly disrupt certainty of mineral title. Every acre of Texas land has probably been leased many times under now-expired leases. On the Commission's theory, any one or more of the prior lessees may have "dedicated" the acreage to an interstate sale. A producer who holds a current lease on the acreage or is considering acquiring such a lease cannot determine whether unknown gas reserves that may underlie it have been dedicated to interstate sale. This uncertainty will deter onshore exploration of previously leased acreage.

The court of appeals correctly held that a lessee cannot create such a "covenant running with the land" because he cannot "legally deal in or dedicate" to an interstate sale the reversionary interest of his lessor. This decision is entirely consistent with the Natural Gas Act, under which the owner of a property interest in natural gas chooses initially whether to sell his gas interstate but then must continue to sell his gas interstate. When a lessee sells his leasehold gas interstate, he commits and must continue to sell only the gas attributable to his leasehold interest.

The Commission claims that this Court must reverse the court of appeals in order to prevent future lessees and lessors from devising short fixed-term leases or leases terminable at will and using such arrangements to harm the interstate market. This argument fails for

two reasons. First, it is against a potential lessee's economic self-interest to enter into such a lease. Second, even if such leases were to occur, and if the lessees attempted to make interstate sales of gas attributable to such leases, the Commission has ample authority to protect the interstate market. The Commission can refuse to authorize the proposed sale unless the lessee obtains longer-term rights of sale from the lessor. All that the Commission cannot do is what it attempted to do in this case: pretend that a lessee can dedicate more gas than he owns, and order an owner of natural gas to make an involuntary initial sale of his gas to the interstate market.

ARGUMENT

I. CERTAINTY OF MINERAL TITLES WILL BE BADLY DISRUPTED IF IT IS HELD THAT A LESSEE CAN DEDICATE ACREAGE, NOT JUST HIS LEASE, TO INTERSTATE SERVICE.

A. *Context: Existing Oil and Gas Lease Law Fosters Exploration and Development.*

The ordinary oil and gas lease provides that a lessee's property right to explore for and produce gas continues as long as the lessee maintains production from the leased acreage in paying quantities. Thus, in the usual case of known reserves, no problem like the present one could arise: If the ordinary lessee still had production in paying quantities after fifty years, his lease would not terminate; he could continue to sell gas until the

reserves themselves were exhausted.[8] On the other hand, any lessee, whether fixed-term or ordinary, takes his lease without knowing whether or to what extent there are any gas reserves underlying the leased acreage. It is in the lessor's interest, as well as the interest of the public generally, that the acreage be explored. Hence, the ordinary lease provides for termination if the lessee has not discovered any gas by the end of a stated, relatively short primary term.[9] The ordinary lease likewise provides for termination if production commences but ceases and the lessee fails to reestablish production with further exploration or development in a very short period of time.[10] Finally, the ordinary lease is generally subject to termination for breach of an implied duty to develop.[11]

The policy of these lease provisions is to encourage drilling. The lessee must drill for whatever reserves he thinks may exist, or forfeit his lease. If he thinks there are no reserves, or no more reserves, he loses his lease and the lessor can sell the right to explore to someone else who has a different opinion or more nerve. Often,

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[8]For this reason, the language used by this Court in previous cases which have arisen under the Natural Gas Act involving ordinary leases, to which the Commission and its supporters cling, is simply irrelevant to this case. The chief example is the statement that "once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval." *Atlantic Refining Co. v. Public Serv. Comm'n.* 360 U.S. 378, 389 (1959). The only dedication to the interstate market involved there was the dedication "of *gas recoverable under these leases.*" 360 U.S. at 387, emphasis added.

[9]3 H. Williams, Oil & Gas Law, §603 (1975 ed.).

[10]*Id.* §§611, 613.

[11]*See* 4 H. Williams & C. Meyers, *Oil & Gas Law*, §815 (1975 ed.).

rather than wait for termination (which costs rental money) or face a suit for nondevelopment by the lessor, the lessee executes a release of his lease. The policy of producing states is to encourage this. The Commission's "covenant" would seriously interfere with these policies of promoting exploration and development.

B. *A Holding That An Oil and Gas Lessee Can Create A "Covenant Running With The Land" By Selling His Leasehold Gas Would Create a New and Disruptive Title Risk.*

The Commission has long held that, if a lessee finds some gas on his leased acreage and makes an interstate sale of his gas, any reserves which he or anyone to whom he assigns his lease *later* discovers on his lease are also dedicated to his sale. *See, e.g., Cumberland Natural Gas Co.*, 34 FPC 132, 137 (1965).[12] The *Cumberland* doctrine causes no difficulties, since the lessee obviously has the right to sell all gas that he discovers and produces under his lease and to encumber his own lease so that anyone to whom he assigns it is similarly bound.[13] But the combination of the *Cumberland* doctrine with the "covenant" that the Commission is attempting to create in this case results in serious difficulties. These difficulties may best be understood by applying the combination of the two doctrines to a very common fact situation.

Assume that an ordinary oil and gas lessee sells some

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[12]*See also Mitchell Energy Corp. v. FPC*, 533 F.2d 258 (5th Cir. 1976).

[13]The Commission recognizes that the lessee may limit his initial sale and dedication, e.g., to the gas he produces from certain depths, and that if he does so this limitation also applies to his assignees. *See, e.g., Blair-Vreeland*, 53 FPC 843, Opinion No. 724, *rev'd on other grounds, Vreeland v. FPC*, 528 F.2d 1343 (5th Cir. 1976).

gas in interstate commerce, either from a lease on Blackacre, or from some other lease that he has committed to the same gas purchase contract, under a certificate of public convenience and necessity from the Commission. Under *Cumberland*, the lessee has thereby dedicated all his leasehold interest in Blackacre reserves, even ones unknown to him at the time he first commences deliveries. But if, as the Commission held in this case, the lessee has also thereby created a federal "covenant" running with Blackacre itself, not merely with his leasehold interest, then he has dedicated to interstate service reserves that he himself never discovers. Under the Commission's theory, he has dedicated reserves that might be discovered on Blackacre by another producer, under a different lease, years after his own lease had terminated for failure of production or failure to develop.

The result is that, unless the decision below is affirmed, prospective new lessees face a novel title risk--a federal covenant to sell any natural gas they may discover to some prior lessee's interstate pipeline purchaser. The new lessee cannot protect himself against this risk by a title search. Gas purchase contracts do not have to be recorded, because they are not generally regarded as conveyances of interest in land.[14] Such contracts, as the Commission itself has conceded, are in fact usually not recorded.[15] Certificates of public convenience and necessity have never been recorded in county courthouses.

In the *Harrison* case, *supra* p. 3, the Commission has

[14]See Tex. Rev. Civ. Stat. Ann. art 6627 (Supp. 1975).

[15]*See Blair-Vreeland*, Opinion No. 724, 53 FPC 843, 8 P.U.R.4th 382, 383 (1975).

argued in response to this point that the prospective new lessee could take the names of previous lessees up to Washington, D. C., and search the Commission's files to see if these lessees had ever obtained certificates covering leases on the acreage in which the prospective lessee is interested. Aside from the exorbitant expense and difficulty involved in this proposal, it would not work because the Commission's files are incomplete. Small producers make their interstate sales under blanket certificates which do not show the acreage covered.[16] As this Court has recognized, small producers do 80% of the nation's exploratory drilling. *FPC v. Texaco Inc.*, 417 U.S. 380, 383-84 n.2. Thus, this gap is a serious one. Moreover, many producers, both large and small, sell under other producers' certificates, as the Commission's regulations permit.[17] In short, if a lessee can create a "covenant running with the land" to sell gas from the land in interstate commerce, he can create an insurmountable title risk for potential future lessees.

Furthermore, if one lessee could create such an encumbrance on Blackacre by selling his leasehold gas interstate, so could any other lessee who ever had a leasehold interest in Blackacre. If Blackacre has been leased many times, there may be many prior interstate dedications - perhaps to different interstate pipelines. To whom is the new lessee obliged to sell whatever gas he discovers? Which alleged "covenant" is binding on him?

The "covenant" that the Commission would create is obviously extremely unfair: it would obligate a new lessee, who may have acquired his lease and committed

[16]*See* 18 C.F.R. §157.40.

[17]*See, e.g.*, 18 C.F.R. §157.40(a) (3).

thousands of dollars to exploration for new reserves[18] on the assumption that he would be free to sell the gas he discovers at current market prices, to sell the gas he discovers in interstate commerce at a regulated price under some other producer's lease and contract that may have expired years ago.

But the "covenant" that the Commission is seeking to create is worse than unfair. The title uncertainties it would create are bound to have a deterrent effect on exploration of acreage that has been previously leased. Less exploration means less new gas.

C. *The Problem Posed By The Commission's "Covenant" Is Real And Substantial.*

The problem posed by the "covenant" that the Commission is attempting to create is not merely hypothetical. In the *Wessely* case, *supra* p. 3, Aquitaine had committed its leasehold interest in certain acreage in Blaine County, Oklahoma, to a gas purchase contract with Arkansas-Louisiana Gas Company (Arkla), an interstate pipeline. The lease was an ordinary one: it had a primary term of five years, and would remain in force as long thereafter as oil or gas was produced from the leased acreage by the lessee. Aquitaine discovered no gas on the acreage during the primary term, and its lease expired and was released of record. However, Aquitaine had sold gas to Arkla from other leases under the same contract and Aquitaine's small producer certificate. After the termination of Aquitaine's lease, the lessors executed a new lease to a different lessee. This lessee assigned his lease to Wessely. Arkla and the Commission asserted that any gas that Wessely might discover must be sold to Arkla for resale in interstate

[18]The average cost of a new well in Texas in 1976 was more than $175,000.

commerce, pursuant to the contract between Aquitaine and Arkla and Aquitaine's small producer certificate.[19]

Similarily, in the *Harrison* case, *supra* p. 3, an independent producer named Crawford once held a leasehold interest in six sections of land in Crockett County, Texas. Crawford sold gas from marginal gas wells on two sections under his lease to Northern Natural Gas Company (Northern) in interstate commerce. The Crawford-Northern contract was not recorded. Believing so strongly that the other four non-productive sections were worthless that he would not have "drilled another well on it with confederate money,"[20] Crawford released his interest in these non-productive sections. Harrison, et al. took a new lease, which included the acreage in which Crawford had released his interest, without any actual or constructive notice of any claim by Northern to gas they might discover--even though they conducted a title search before taking their lease. Harrison, et al. then drilled a discovery well and found a new gas field, unknown to Crawford. Northern claimed the right to buy the gas, and the Commission agreed, analogizing the case to the present one.[21] Commissioner Watt dissented, saying

[19]The Federal District Court for the Western District of Oklahoma held that Aquitaine had not dedicated the gas attributable to Wessely's lease. The Court stated that it "construes the Natural Gas Act as limiting the capacity of a party purporting to bring about a dedication of gas to interstate commerce to that of dedicating gas which he owns and as not extending to gas produced at a time after he ceases to own any interest in the premises." This decision is on appeal.

[20]According to the record in the *Harrison* case as filed with the Fifth Circuit.

[21]This decision has been appealed to the Fifth Circuit, No. 76-4318. The State of Texas has filed amicus briefs with the Fifth Circuit in support of Harrison, et al.

that "as in the *Southland Royalty Co.* case . . . the majority has exceeded its authority under the Natural Gas Act and ignored established property law."

Thus, the problem posed by the Commission's "covenant" is real, not merely hypothetical. In addition, it is a problem of substantial magnitude, not a trivial one.

Texas has verified the magnitude of this problem by reviewing the lease files maintained by its General Land Office for State-owned lands. For illustrative purposes, we selected all oil and gas leases covering public lands situated in Pecos and Chambers Counties. These are counties which have long been productive of natural gas, from which at least some gas has at different times been sold in interstate commerce, and which are again the subject of considerable exploratory interest at the present time, principally for deeper, more expensive potential reserves. Together, these counties contain 3,427,840 acres of land, both public and private.

Our search reveals some 4,040 ~~non~~ now-expired State leases since 1944 alone, covering an estimated total of 1,977,292 acres. That is, substantially more than half of the land in these two productive counties has been previously leased, to lessees who may or may not have sold gas in interstate commerce and thereby allegedly created a "covenant running with the land" under the Commission's theory. (In all likelihood, every acre in both counties has been leased, since the General Land Office records do not cover private leases.)

To find out whether this acreage might historically have been subject to numerous different leases, and thus numerous different alleged "covenants," we randomly selected ten mineral lease numbers. The geographic

area encompassed by these ten expired leases had previously been subject to a total of 90 other entirely distinct leases. In other words, a prospective lessee of public lands in Pecos or Chambers County could expect that the State had already leased all or part of a particular tract *nine different times.*

This hypothetical lessee could not know whether one or more of his nine predecessors had ever executed an interstate gas purchase contract and made certificated deliveries thereunder, and thereby created an alleged "covenant." The General Land Office did not begin maintaining records of gas contracts executed on State-leased lands until November 1, 1974.[22] As previously noted, there are no comprehensive public records of interstate gas contracts which may have been entered into by lessees of private lands.

The title uncertainties which result from the Commission's proposed federal "covenant" are a powerful argument against its creation. As demonstrated in respondents' briefs, to hold with the Commission that a lessee can create a "covenant" which outlasts his leasehold interest would depart from well established Anglo-American real property law. This Court has properly said that judicial "concern for unsettling titles" makes the "substantive rules governing the law of real property . . . peculiarly

---

[22]The State of Texas has used state records to illustrate its point, because of relative ease of access. We do not thereby concede, or even suggest, that the holding in the present case could be applied to the more than 16 million acres in which the State of Texas owns the mineral interest. The present case does not involve such acreage. Any attempt by the Commission to apply its doctrine to such lands would raise a series of constitutional and statutory issues not presented by this case.

subject to the principle of *stare decisis.*" *State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 381-82 (1977).

Thus, unless the court of appeals was patently wrong in reversing the Commission, or unless the court of appeals' decision will itself have seriously adverse consequences, this Court should affirm the court of appeals. As demonstrated briefly below, the court of appeals was plainly correct and its holding poses no threat to the public interest.

II. THE COURT OF APPEALS CORRECTLY HELD THAT A MINERAL LESSEE WHO MAKES A CERTIFICATED SALE OF HIS LEASEHOLD GAS DOES NOT THEREBY CREATE A FEDERAL "COVENANT RUNNING WITH THE LAND."

The court of appeals held that a lessee cannot create an interstate dedication which outlasts his lease and "runs with the land." Specifically, the court of appeals held that Gulf, as owner of a leasehold interest, "could not legally deal in or dedicate" to interstate commerce gas that might be produced by the reversioners "upon termination of Gulf's estate." *Southland Royalty Co. v. FPC*, 543 F.2d 1134, 1137 (5th Cir. 1976). This decision is entirely consistent with the Natural Gas Act as well as real property law.

The court of appeals' decision rests on simple recognition that a reversionary property interest has its own identity, separate and apart from the leasehold interest. Since the lessee does not own the reversionary interest, he may not "legally deal in or dedicate" it to his interstate sale. The owner of the reversionary interest, like any other owner of a property interest in natural gas, has the right to make his own initial choice of where to sell the gas attributable to his interest.

The court of appeals' decision does not in any way weaken or abridge the Natural Gas Act. Under the Natural Gas Act, *once* an owner of natural gas had dedicated *his* gas to an interstate sale, he must obtain abandonment authorization from the Commission before he can remove *his* gas from his interstate sale. *Atlantic Refining Co. v. Public Service Comm'n of N.Y.*, 360 U.S. 378, 389 (1959). The court of appeals simply held that Gulf dedicated only its leasehold gas to its interstate sale, and did not dedicate Southland Royalty's reversionary gas.

III. THE COMMISSION'S JURISDICTION WILL NOT BE UNDERMINED BY REAFFIRMATION OF THE LEGAL PRINCIPLE THAT A LESSEE CAN DEDICATE ONLY HIS LEASEHOLD INTEREST.

A. *Introduction: The Commission's Policy Argument.*

In this Court, the Commission and its supporters contend that the decision of the court of appeals "would severely impair the Commission's regulatory authority." (FPC Brief at p. 29). They speculate that the decision below "creates a substantial incentive for lessors and producers to draft their leases in ways permitting termination when market conditions make it advantageous."*(Id.* at p. 30). The Commission itself gives no examples, much less any evidence, of such potent draftsmanship, but merely claims that "it would not be difficult to devise lease arrangements that maximized both parties' options to leave the interstate market when this served their mutual advantage." *(Id.* at p. 30, n.29). Of the other petitioners and supporting amici, two are less bashful, hypothesizing short fixed-term leases, leases terminable at will, et certera. (Briefs

of El Paso at p. 23-25 and AGD at p. 9).

As previously noted, Texas doubts that this argument can be used to sustain the orders under review. It was not relied on or even mentioned by the Commission in those orders, there is no evidence in the record whatsoever to support the Commission's theory, and it obviously does not arise on the facts of this case. The lease in this case was entered into in 1925, almost thirty years before it was even held that the Natural Gas Act applies to a producer's interstate sale. The 1925 lease provided for a very long, rigidly fixed term. In 1975 that lease expired according to its terms and not by any action of the lessee.[23] But even if the argument can be considered, it should be rejected. The problem hypothesized is not a realistic one, and the Commission has ample authority to deal with it if it should materialize.

B. *The Decision Below Will Not Foster Evasion of the Commission's Jurisdiction.*

The basic fallacy of the theory that the decision of the court of appeals will cause lessors and lessees to agree upon short fixed-term leases, leases terminable at will, etc., is that it ignores the lessee's economic self-interest. He pays a bonus and rentals for the lease to obtain the right to explore for and produce gas from the leased acreage. The lessee's major investment, however, is not the lease bonus or rentals, but his drilling costs. His only opportunity to recover these costs is by selling the gas (or oil) that he discovers on the leased acreage. Thus, he has the strongest possible reason for assuring himself that *if* he finds any natural gas, he will be permitted to produce

[23]On the contrary, Gulf fought all the way to the Supreme Court of Texas in an unsuccessful effort to extend the lease past its term. *Gulf Oil Corp. v. Southland Royalty Co.*, 496 S.W.2d 547 (Tex. 1973).

and sell all of it. Short fixed-term leases would threaten to deprive him of his ability to recover his investment. Obviously, leases terminable at will would do so. Perhaps the Commission or its supporters can conceive a form of lease instrument satisfactory to a lessee while still capable of the mischief they fear, but in the more than two years of this litigation they have so far failed to identify any such instrument.

Assume, however, that other counsel are more imaginative than those representing the parties to the present case, and do succeed in devising such lease arrangements. The Commission has ample authority to protect interstate gas consumers against the harm such leases would allegedly threaten.

If a lessee approaches the Commission with a certificate application for a sale of gas produced from such hypothetical lease, the Commission can reject the application on the grounds that the proposed sale is not required by the public convenience or necessity.[24] Thus, in *Transco Exploration Co.*, Docket No. CI77-306, the Commission initially denied an application for a limited-term certificate with pregranted abandonment by order issued June 27, 1977. Transco Exploration had acquired the lease from which the gas would be produced by assignment from another producer, who had retained an option to convert his royalty interest into a partial working interest. The Commission said that, as a matter of policy, it should not grant a certificate unless the potential working interest owners also committed their gas. In an order on rehearing, issued September 19, 1977, the Commission reversed itself on the grounds that an exception was necessary on the facts of the Transco Exploration case: the applicant

[24]*See* Section 7(e) of the Natural Gas Act, 15 U.S.C. §717f(e).

was an interstate pipeline's producing affiliate which had spent substantial ratepayer money (advanced by the pipeline) on the well before the policy was announced. The Commission said that, in the future, no such applications would be granted even to the pipeline affiliates.

Alternatively, the Commission can grant the certificate, conditioned upon the would-be seller obtaining from his lessor a sufficiently long-term and stable leasehold interest to satisfy the Commission.[25]

Only one of the Commission's supporters has even attempted to answer this argument. The "Associated Gas Distributors" (AGD) claim that the Commission's power over certification is "no answer" because "in that case the entire supply might never be made available to the interstate market." (AGD Brief at p. 9). Actually, it is AGD's "answer" which is "no answer." All that AGD is saying is that, if the decision below is allowed to stand, a producer may choose whether or not to sell his gas to the interstate market in the first place. This is precisely what the Natural Gas Act provides, and precisely what this Court has held that it provides. Under the Natural Gas Act, a producer who applies for a certificate to make an interstate sale has an "undoubted right to stand firm on its own application, and reject the proffered certificate." *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 141 (1960). The Commission cannot force a producer "to dedicate its gas to interstate commerce."[26]

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[25] *See* Section 7(e) of the Natural Gas Act, 15 U.S.C. § 717f(e).

[26] *Public Serv. Comm'n v. FPC*, 463 F.2d 824 (D.C. Cir. 1972).

CONCLUSION

For the foregoing reasons, the State of Texas as amicus curiae respectfully submits that the decision of the Fifth Circuit is sound in policy as well as in law. If an oil and gas lessee could create a federal "covenant running with the land," mineral title would be thrown into great uncertainty and new exploration in areas which have been previously leased would be significantly deterred. In contrast, no harm to the public interest would come from permitting the Fifth Circuit's decision to stand. We respectfully urge this Court to affirm the decision below.

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IN THE

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October Term, 1977

FEDERAL POWER COMMISSION, et. al.,
Petitioners,

vs.

SOUTHLAND ROYALTY COMPANY, et. al.,
Respondents.

On Writs of Certiorari To
The United States Court of Appeals
For the Fifth Circuit

BRIEF OF THE STATE OF NEW MEXICO AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENTS JOINING IN THE BRIEF OF THE STATE OF TEXAS

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INTEREST OF THE STATE OF NEW MEXICO

The State of New Mexico (New Mexico) has interests in this case very much like those of the State of Texas. New Mexico owns in excess of thirteen million (13,000,000) acres of mineral land which has been, or will be, leased for oil and gas production. New Mexico's State Land Office oversees this leasing effort.

In addition to royalties from oil and gas production, New Mexico receives severance taxes which are used for numerous purposes to benefit the people of New Mexico.

Most of the natural gas produced in New Mexico leaves the state and goes to consumers in non-producing states. However, the people of New Mexico also consume natural gas. They are entitled to be treated fairly by the Federal Power Commission. Gas consumers in a producing state are no less worthy of consideration than consumers in non-producing states. The Federal Power Commission seems to have forgotten this point.

The State of New Mexico Energy Resources Board ("Board"), whose function is to see that New Mexico has sufficient energy for its needs, has a vital interest in protecting the state from even further erosions of its natural gas supplies. Thus, the Board is particularly concerned that the decision of the Federal Power Commission not be revived and that the Court of Appeals' decision in *Southland Royalty Co. v. FPC*, 543 F.2d 1134 (5th Cir. 1976) be upheld.

As we have stated, New Mexico has a vast amount of public land which is the subject of oil and gas leases. We fear, as does Texas, that reversal of the Court of Appeals in this case will jeopardize the royalty and tax revenue derived from gas production. Moreover, gas leases on private lands in New Mexico will be no less affected – undoubtedly adversely – if the decision of the Federal Power Commission were upheld.

This decision of the Court of Appeals in *Southland* rejects the excessive claims of authority of the Federal Power Commission in this case. New Mexico supports the Court of Appeals in this regard.

ARGUMENT

New Mexico cannot beneficially add to the arguments of the State of Texas. Time is very short, and New Mexico believes that the State of Texas has amply expressed not only its concerns, but those of New Mexico in regard to the issues presented

in the *Southland* case. Therefore, the State of New Mexico joins in the brief of the State of Texas supporting the Respondents.

CONCLUSION

For the reasons expressed in the brief of the State of Texas, the State of New Mexico respectfully asks this Court to affirm the decision of the Court of Appeals in this case.

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CERTIFICATE OF SERVICE

I, Vernon O. Henning, certify that the foregoing brief has been served upon the parties by placing the required number of copies in the United States mail with prepaid first class or airmail postage on October 21, 1977.

/s/ Vernon O. Henning

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IN THE

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BRIEF AMICUS CURIAE ON BEHALF OF THE STATE OF LOUISIANA IN SUPPORT OF RESPONDENTS

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---

BRIEF AMICUS CURIAE ON BEHALF OF THE STATE OF LOUISIANA IN SUPPORT OF RESPONDENTS

QUESTION PRESENTED

Whether a lessee under a fifty-year lease can, by selling gas which it produces from the leasehold property in interstate commerce, commit for sale gas which it does not own—the gas remaining in the ground after the lease expires.

STATEMENT

In this case, the Federal Power Commission (Commission) held that the lessee under a fifty-year fixed-term oil and gas lease dedicated for sale property which it did not own—the gas which remained in the

ground at the end of the lease. The Fifth Circuit reversed on the ground that a person may not encumber or agree to sell that which he does not own.

There is no disagreement about the facts in this case. All parties agree that the lessee, Gulf Oil Corporation, does not own the gas which remained in the ground at the end of the fifty-year term of its lease. And all parties agree that the owner of the gas, Southland Royalty Company, has never agreed to sell its gas to El Paso. All parties also agree on two central legal principles: (1) that a person cannot sell that which does not belong to him, and (2) that under the Natural Gas Act, 15 U.S.C. § 717 *et seq.*, gas which has been dedicated for sale in interstate commerce may not be withdrawn from sale without first obtaining Commission approval. *Atlantic Refining Co.* v. *Public Service Commission of New York,* 360 U.S. 378 (1959). The only question for decision, then, is whether Gulf ever could have dedicated the gas which all agree it did not own.

Although theFifth Circuit characterized this case as presenting a "property rights vs. regulatory powers issue" (543 F.2d 1134, 1136), there is in fact no conflict between fundamental principles of property ownership and the regulatory powers given to the Commission by the Natural Gas Act. The Act gives the Commission no power to force or to permit a party to dedicate for sale gas which he does not own.

INTEREST OF THE STATE OF LOUISIANA

Approximately 25 percent of the nation's natural gas is produced in Louisiana, and more than 75 percent of the state's production is sold in interstate commerce. Under state law, the Louisiana Department of Natural

Resources and Louisiana's Commissioner of Conservation are charged with the responsibility of enforcing conservation practices, protecting landowners' rights, and encouraging the orderly development of the state's mineral resources. The state itself is a lessor of state-owned lands and water bottoms from which natural gas and oil are produced. Both as a landowner in its own right and as the guardian of the interests of its citizens, the State of Louisiana is concerned about the effect the Commission's position in this case will have on state law and property relationships and upon the exploration for and development of natural gas.

ARGUMENT

I. THE COMMISSION'S POSITION IN THIS CASE THREATENS THE INTEGRITY OF PROPERTY RELATIONSHIPS AND WILL CLOUD THE TITLE TO REAL ESTATE IN LOUISIANA AND ELSEWHERE.

The rationale of the Commission's holding in this case would undermine established patterns of property ownership and would cloud the title to countless acres of gas-producing property in Louisiana.

The Commission's argument reduces to the proposition that a person can commit for sale property which does not belong to him. That proposition, if accepted, is truly revolutionary in its implications. The Commission argues in this case that temporal limitations upon property ownership may be ignored under the Natural Gas Act. By precisely the same reasoning, the Commission could argue in another case that limitations in space should also be ignored. In Louisiana, as in other gas-producing states, it is common for adjacent landowners to share proportionate interests in gas reservoirs which underlie their property. Each surface

owner may lease his proportionate interest in the underlying reservoir. Thus, some gas from a common reservoir may be leased to a producer which is selling its interest in interstate commerce, whereas another portion of the gas from the same reservoir may be leased to a producer which is selling to other purchasers. The Commission's certification policies have always recognized the correlative rights of adjacent landowners. The Commission's theory in this case is that ownership interests may be disregarded once sales in interstate commerce have begun. If Gulf can commit Southland's gas, could it also commit gas which belonged to an adjoining landowner?

In addition to abrogating long established principles of property ownership, the Commission's position, if adopted, would cloud the title to large amounts of land in the gas producing states. In Louisiana, gas sales contracts are rarely recorded. Third party purchasers of land which has been previously subject to a leasehold have no way of knowing whether previous lessees have ever executed contracts to sell gas from their leases in interstate commerce. Under the Commission's theory, even if a lease is terminated for failure of production, if the lessee had previously dedicated production from the lease to interstate commerce, any new reserves discovered by subsequent lessees could also be deemed to have been dedicated. Potential purchasers and lessees would have no practical way to discover such previous dedications. The result would inevitably be to discourage speculative drilling ventures, including those at greater depths where both the risks and the potential for new discoveries may be greater.

The mischief inherent in the Commission's position, then, is great, and its adverse impact could extend be-

yond situations like those presented under the facts of this particular case.

II. THE NATURAL GAS ACT DOES NOT ABROGATE OR SUPERSEDE ESTABLISHED PRINCIPLES OF PROPERTY OWNERSHIP.

There is no real dispute with the conclusion of the Fifth Circuit about the nature of Gulf's property interests:

> Under applicable Texas law, Gulf's rights were those of a tenant for a term of years; its interest was a limited one which terminated completely when title reverted to Southland at the expiration of the 50-year term. It is black letter law that a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the term of his interest . . . Since Gulf never was possessed of rights in the gas under the leasehold lands which could survive the termination of its 50-year lease, it could never create rights in a third person to that same gas . . . The estates in the single tract are as separate as if they subsisted in separate parcels of land. . . . [T]here likewise can be no question that, under well established concepts of property law, Gulf could not legally deal in or dedicate that portion of the gas which Southland might own upon termination of Gulf's estate. 543 F.2d 1134, 1137 (citations omitted).

The only question in this case is whether the Natural Gas Act was intended in some way to abrogate the fundamental ownership principles which have been embodied in the common law for centuries. Such an intention should not be lightly assumed, and, in fact, it is belied by both the language and the purpose of the Natural Gas Act.

As a general proposition, federal law will not be interpreted to supersede state law "unless that was the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Burbank* v. *Lockheed Air Terminal*, 411 U.S. 624, 633 (1973). This Court has said:

> It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. *The exercise of federal supremacy is not lightly to be presumed. Schwartz* v. *Texas*, 344 U.S. 199, 202-203 (1952) (emphasis supplied).

And, in *Florida Avocado Growers* v. *Paul*, 373 U.S. 132, 146-47 (1963), the Court stated that federal legislation will not be found to displace state law "in the absence of an unambiguous Congressional mandate to that effect."

In this case, what is challenged is not merely a state regulatory statute. Nor is it, as the Commission would have it, just a "technical concept of local law" (Brief for FPC at 11). What is at stake is nothing less than basic concepts of ownership which date to the earliest traditions of the common law. A Congressional intent to abrogate them certainly cannot be presumed in the absence of a Congressional mandate which is particularly "clear" and unquestionably "unambiguous."

In fact, what is demonstrated by both the language and the legislative history of the Natural Gas Act is a carefully expressed Congressional intent to leave undisturbed state regulatory powers and traditional concepts of ownership. The Natural Gas Act was carefully tailored to supplement rather than to supplant state law. In drawing the Natural Gas Act, the Congress was

"meticulous to take in only territory which [the Supreme Court] had held that the states could not reach," *Panhandle Eastern Pipe Line Company* v. *Public Service Commission*, 332 U.S. 507, 519 (1947):

> The Act, although extending federal regulation, had no purpose or effect to cut down state power. On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement it and reinforce it in the gap created by the prior decisions [of the Supreme Court]. *The Act was drawn with meticulous regard for the continued exercise of state power, not to handicap or to dilute it in any way*. 332 U.S. at 517-518 (emphasis supplied).

The Court restated the point in *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949):

> . . . [T]he Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limit of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies. 337 U.S. at 502-503.

And:

> The Natural Gas Act was designed to supplement state power and to produce harmonious and comprehensive regulation of the industry. *Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other*. 337 U.S. at 513 (emphasis supplied).

The language of the Natural Gas Act also shows an express Congressional intent to respect property ownership. Section 7(e) of the Act, 15 U.S.C. § 717f, requires that the applicant for a certificate be "able" to perform the proposed service. "Ability" to perform obviously implies legal power to perform. The same section also establishes that an applicant for a certificate be "willing" to perform services being proposed.

Sunray Mid-Continent Oil Co. v. *FPC*, 364 U.S. 137 (1960), relied upon so heavily by the Commission, merely confirms the point. In *Sunray*, the Court did not hold that an unwilling seller could be required to commence or to continue interstate service. *Sunray* held only that the Commission had the authority to refuse the request of an applicant to limit a certificate in time and, instead, to offer the applicant a certificate of unlimited duration. It could not force the applicant to accept the offered certificate. The applicant in *Sunray* could still have "avail[ed] itself of its undoubted right to stand firm on its own application, and reject the proffered certificate." 364 U.S. at 141. *Sunray* certainly did not establish the principle that a producer may be forced by the Commission to dedicate and sell gas which it does not own or which it is unwilling to commit to sale under the terms laid down by the Commission.

III. THE DECISION OF THE FIFTH CIRCUIT IS NOT CONTRARY TO "ESTABLISHED CONSTRUCTION" OF THE INTERSTATE COMMERCE ACT.

In its brief to this Court, the Commission places heaviest reliance upon the contention that the Fifth Circuit's holding "is contrary to the long settled construction. . . . of the parallel abandonment provisions of the Interstate Commerce Act." (Brief for FPC at

21.) The Commerce Act argument, of course, obscures the fact that the Commission's position is contrary to the "settled construction" of the Natural Gas Act.

Initially, Louisiana strenuously disputes the assumption that these ICC cases are relevant to the Natural Gas Act question presented in this case. The regulation of a producer's sale of natural gas in interstate commerce obviously involves different issues, different questions of public policy, and different patterns of fact and law than does the regulation of railroad service.

However, to the extent that the construction of Section 1(18) of the Interstate Commerce Act is deemed relevant at all to the issue presented in this case, it is simply incorrect to say that judicial construction of the Commerce Act supports the Commission's position. The decisions of this Court which are cited by the Commission, *Thompson* v. *Texas Mexican Ry.*, 328 U.S. 134 (1946) and *Smith* v. *Hoboken R.R.*, 328 U.S. 123 (1946), certainly do not support the Commission's position.

Thompson differs from the present case in two significant respects. First, the Court in *Thompson* specifically noted that the trackage agreement did not involve any question of property rights, since "the trackage agreement created only a personal obligation and did not purport to grant . . . any estate in the property. . . ." 328 U.S. at 140.

Second, in *Thompson*, the Court specifically noted that both parties were "interstate carriers by railroad and subject to the provisions of the Interstate Commerce Act." 328 U.S. at 136. As such, they were both

subject to the provisions of Section 1(18) which, by its terms, applies only to "carriers by railroad":

> [N]o *carrier by railroad* subject to this chapter shall abandon all or any portion *of* a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

Similarly, in *Smith* v. *Hoboken R.R.*, both parties were "carriers by railroad" and subject to the Interstate Commerce Act by its terms. In holding that neither the lessee nor the lessor could terminate the operation of the railroad without abandonment authorization from the ICC, the Court noted that previously the ICC had issued an order dismissing the lessor's application to "resume operations of the railroad" on the grounds that no certificate was needed since the lessor's

> "obligations and duties to the public *have never ceased* but have merely been performed by the lessee for its benefit, and when the latter for any reason no longer can perform such obligations, the duties must be performed by the lessor on its own behalf." 328 U.S. at 129 (emphasis supplied).

Thus, in *Smith*, the lessee had been performing a preexisting obligation of the lessor, and when the lessee ceased to perform, the ICC's position was that the lessor's obligation was revived and could not be terminated without the approval of the ICC.

Neither *Thompson* nor *Smith* can be cited for the proposition that a nonjurisdictional entity (a landowner) can be committed by the actions of its lessee to perform jurisdictional services. The point is well explained by the Second Circuit in *Meyers* v. *Famous Realty, Inc.*, 271 F.2d 811 (1959), *cert. denied*, 362 U.S. 910 (1960). In *Meyers*, the lessor of land and tracks previously used by the Jay Street Railroad sought to discontinue railroad operations upon the termination of Jay Street's lease. The court held that the lessor (Famous Realty) was under no obligation to carry on Jay Street's operations "when its lease expires . . ." 271 F.2d at 814. The Commission's attempt to distinguish the *Meyers* case is unavailing. The Commission contends that the principle established in *Meyers* and in the other railroad cases is that railroad operations commenced under lease "may not be terminated unless some party; either the lessor or the lessee, obtains abandonment authorization from the regulatory authority." (Commission Brief at 27-28) The "principle" which the FPC attempts to read into *Meyers* is not the holding in *Meyers* or in any other case cited by the Commission.

In specific reference to the *Thompson* and *Smith* cases, the Second Circuit said:

> [T]hose cases hold, at most, that once a party acquires . . . the status of a "carrier by railroad" . . . it cannot absolutely terminate such status and the duties thereof by leasing its railroad facilities to another; once the lease is terminated or the lessee obtains permission to abandon its operations, the lessor is under *a revived obligation* to operate its railroad properties until it too receives an abandonment order from the Commission. . . . *None of the decisions cited hold or imply that a non-carrier, by merely leasing its properties to a carrier, becomes a "carrier by railroad. . . ."* We hold that a carrier which leases mere trackage rights to another carrier is under no obligation to carry on that other carrier's operations when its lease expires

> or that other carrier's operations are legally abandoned. . . . [A] contrary holding would lead to the absurd conclusion that one renting a patch of cornfield to a railroad would come under an obligation to operate that railroad if it obtained permission to abandon the operation of its line. 271 F.2d 811, 814-815 (emphasis supplied).

By the same reasoning, a landowner such as Southland Royalty does not become a "natural gas company" subject to the provisions of the Natural Gas Act merely by leasing its properties to an entity which is a natural gas company.

IV. THE PUBLIC INTEREST DOES NOT REQUIRE ACCEPTANCE OF THE COMMISSION'S POSITION IN THIS CASE.

Lacking a legal basis for its position, the Commission argues essentially that the public interest will best be served if its extra-legal position prevails. The short answer to the Commission's policy arguments was that given by the D.C. Circuit in *Mobil Oil Corp.* v. *FPC*, 463 F.2d 256 (1972), *cert. denied*, 406 U.S. 976 (1972):

> . . . . [I]t is not sufficient justification upon which to base an expansion of the Act to activities clearly not within its terms. . . . The FPC is limited by the provision[s] establishing its jurisdiction . . . 463 F.2d at 263.

If the Commission believes that its jurisdiction should be broadened, it should take its request to the Congress.

In addition, the Commission is simply wrong about where the public interest lies. As previously discussed, acceptance of the Commission's position would have severe repercussions on real estate transfers in the gas producing states, would threaten established property relationships among adjacent landowners, cloud legal titles, and discourage natural gas exploration and production. Rejection of the Commission's position on the other hand, as Southland Royalty has shown in its Brief in Opposition to the Petition for Certiorari (at 11-13) would have a result limited in its significance. The public interest would be best served by the affirmance of the judgment of the Fifth Circuit.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit should be affirmed.

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